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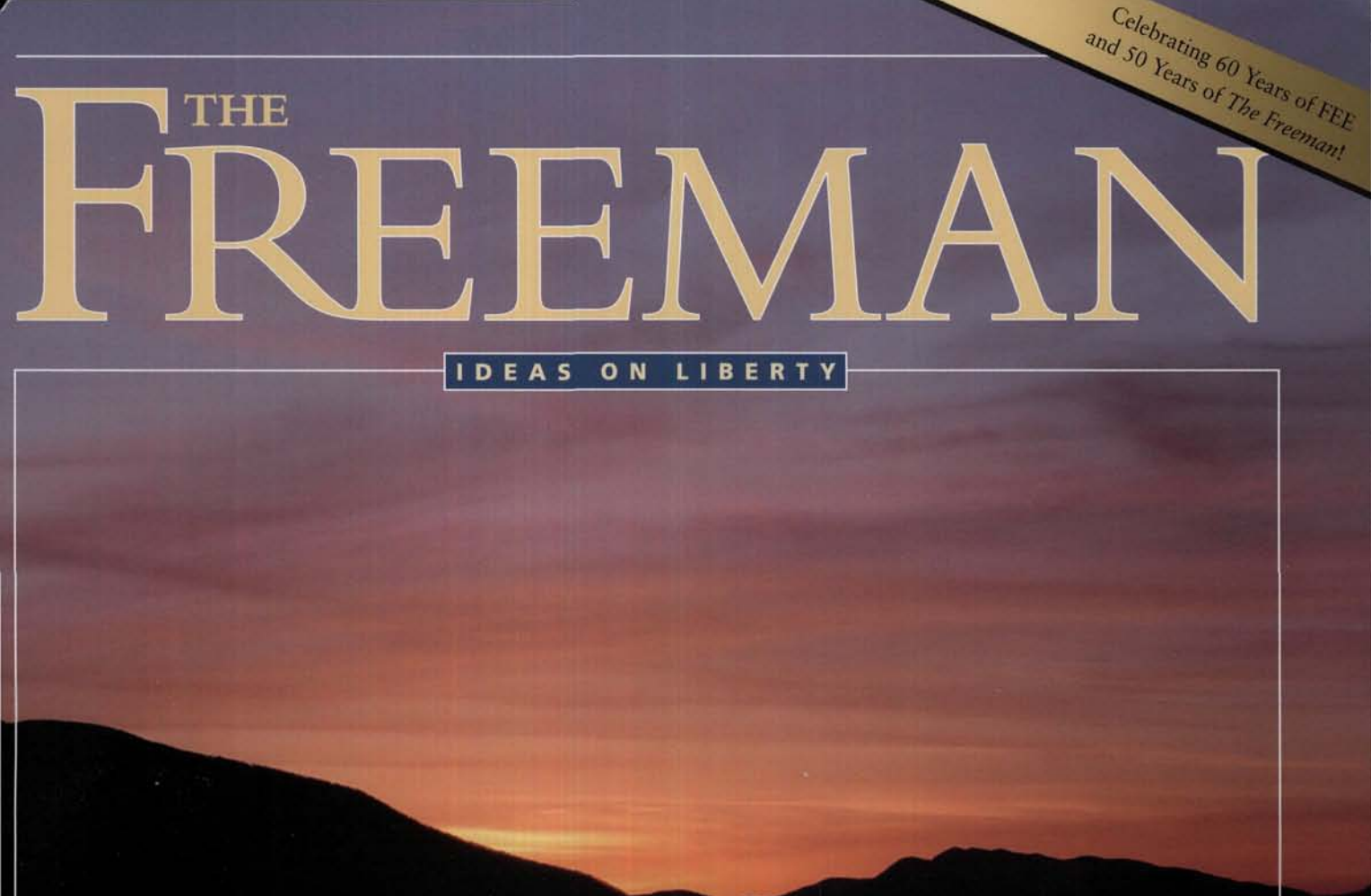

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IDEAS ON LIBERTY
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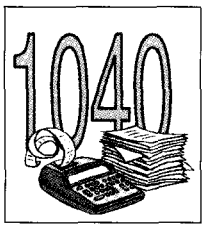

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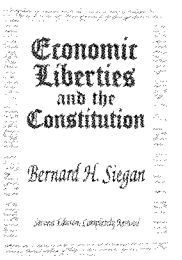

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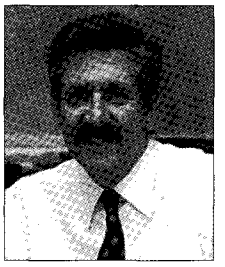
The Misplaced Acceptance of Political Leaders



BY RICHARD M. EBELING

This is an election year, and as in all past election years we are inundated with promises and proposals from candidates, each hoping to attract our votes. For the most part what they are promising is "leadership." They tell us all the things they will do for us *if only* we put them in the legislature, Congress, or the governor's mansion. They almost always fail to remind us, however, that in the political arena there is nothing they can do *for* us unless they have coercive power *over* us.

We need to remember that whenever political leaders undertake to "guide" America it always means a reduction in our freedom to peacefully solve our own problems and improve our own lives as we think best. Rather than each of us having the autonomy to decide what matters to us, those in political control make us all march to a single government drummer.

Are the American people to be guaranteed government-provided or -subsidized prescription drugs? The only way government can do this is to tax other members of society to cover the full costs of providing them to the targeted beneficiaries, as well as prohibiting under threat of fine and/or imprisonment all attempts to manufacture, buy, or sell such prescription pharmaceuticals at terms different from those prescribed by those political leaders.

Are charitable organizations to be supplied with financial support by the government through "faith-based" initiatives? Then the government has to rob Peter to provide Paul with the extra money to do those supposed "good works." At the same time, a growing spider's web of rules, regulations, and standards inevitably envelops religious and charitable organizations as they become increasingly dependent on money from the state.

Are various selected industries and trades to receive special protection and support from tariff walls against foreign competition, or subsidies to maintain domestic prices and stimulate foreign sales? Then American consumers will pay higher prices for the goods they wish to buy and have less money to spend in ways that would have been available on an unhampered free market. Government, and not the free choices of buyers and sellers on an open, competitive market, then influences and directs what is offered to consumers.

Are the youth of America to be provided with "better education" through greater government involvement in determining school standards, curriculum, and testing around the country? Then parents and children will have even fewer personal choices concerning the content and quality of education, as a government-imposed guidebook of regulations emanates from Washington, D.C., and the state capitals.

Often the imagery conjured up with the concept of "leadership" is that of the military. The leader is the commander in charge not merely of rallying but also of directing the troops to attain "victory" over a common enemy. A single strategic plan is designed and imposed on the rest of us through a chain of command. But the very notion of such leadership implies subordination and obedience. What you or I may want must be made subservient to what the political leaders have decided for us. Unlike the totalitarian systems of the last century, such subservience in contemporary America does not involve the direct heavy-handed use of brute police power—at least not in most instances.

It is done in the United States and most Western countries more lightly through taxation, regulations, and legal prohibitions or mandates. Also, there is not one overarching central plan, as used to be imposed in the former Soviet Union. Rather there is an intricate web of different political plans, each the result of the corrupting and often contradictory interactions of politicians, bureaucrats, and special-interest groups in the modern interventionist state.

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But the fact remains that practically all those politicians running for office are selling themselves as leaders into whose hands we should place some corner of our life, since they assure us that they can take care of us and our problems better than if we tried to handle them ourselves.

Friends of freedom have long warned of the dangers from ceding authority over such matters to political leaders. Adam Smith's words ring as true today as when he wrote them in *The Wealth of Nations* more than two centuries ago:

> The statesman, who should attempt to direct private people in what manner they ought to employ their capitals [wealth and resources], would not only load himself with a most unnecessary attention, but assume an authority which can safely be trusted, not only to no single person, but to no council or senate whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.

Concerning how to apply his time, resources, and energies, Smith said, "[E]very individual, it is evident, can, in his local situation, judge much better than any statesman or lawgiver can do for him."

In more recent times Adam Smith's warning has been echoed by F. A. Hayek, who spoke of the "pretence of knowledge" on the part of those who wish to direct the affairs of society. And Wilhelm Röpke lamented the "hubris of the intellectuals" who arrogantly presume they know enough to redesign the social order. We need to remember that those who offer themselves to us at election time are mere mortals like ourselves. They possess no special wisdom, no Olympian powers that provide them with capacities above the "common man," whom they claim to want to represent in political office but in reality over whom they wish to rule and command.

Undesirable Outcomes

Candidates motivated by ideology assume that when men are free, outcomes will be undesirable and that only government can set things right. These candidates view themselves as the political parents who must oversee the citizen-children (the rest of us), who perpetually are never grown up enough to be free and responsible adults.

But whether they are guided by ideology or simply a baser desire for the power that political office can provide, the reality of politics in the modern interventionist state is that "leaders" use their authority for special-interest plunder. To continue with the metaphor, they are in fact abusive political parents who hurt and manipulate many of the citizen-children in their "care" to benefit themselves and favored groups that help maintain them in power. They then use various propaganda devices to persuade the abused citizen-children that it's all being done for their own good. Alas, too many of our fellow citizens fall victim to this psychological manipulation and cannot imagine a world without political parents who watch over and control them.

In the free society—in which government is confined to the essential but limited functions of protecting life, liberty, and property—politicians and bureaucrats have no assigned "leadership" role. Their function is far more modest, though useful: seeing that each of us is left free from violence and fraud to direct his own life as he considers best and most fulfilling.

Freedom means for each of us to be "captain of his own fate" and not to be a docile subordinate waiting for those in political authority to decide his fate for him. Indeed, those who advocate political leadership to get the nation moving, to steer it in the right direction, or to impose government cures on supposed social ills at home and abroad are the gravediggers of liberty.

That is why we must always beware, and most especially in election years, of those who offer themselves as our political leaders. Their triumphs mean more nails hammered into the coffin of freedom.

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Perspective

The Governmental Habit

In 1977 the late economic historian Jonathan R. T. Hughes published a book called *The Governmental Habit* (updated in 1991 as *The Governmental Habit Redux*). It showed how pervasive government intervention in the economy has been since colonial times. The title captures an important phenomenon. People are in the habit of looking to government—the only agency that may legally wield or threaten force against nonaggressors—to get what they want. While earlier generations of Americans were hesitant to ask the local, state, or national government to do certain things (although perhaps not as hesitant as we thought), few modern Americans have any such scruples.

Americans of all classes expect the government (translation: taxpayers) to pick up the tab for services. People even want the government to do things that are outright dumb, such as compel us to conserve energy. What's so funny is that the greatest outcry for mandatory conservation comes when prices are rising. It would be foolish enough to compel conservation when prices are falling. But when they are rising? What can the government do that the discipline of the price system wouldn't do?

When I was growing up in the 1950s and '60s my father's voice would often boom through the house with the words, "Why are all these lights on?"—his response to finding rooms in our home brilliantly illuminated but unoccupied. (It's one of his habits I picked up.) I don't recall if he did this only when electricity prices were rising, but I doubt it. He was being a conservationist, although not in the way the George Bushes and Al Gores want us to be. He wasn't thinking about unborn generations or the health of the planet. He was thinking about his family. It was his own money he was conserving. He understood that money spent to light up empty rooms is money that couldn't be spent to buy his children clothes or to send them to college. He was a businessman, not an economist. But it takes no special knowledge to understand that wasting one's own money is unwise.

Isn't it slightly silly for the first reaction to rising gasoline prices to be, "The government should increase the mandatory fuel-efficiency standards for automobiles"?

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Leaving aside that the CAFE standards encourage driving by increasing miles per gallon and kill people by encouraging the production of lighter cars (see page 36), why would it be necessary for the government to force us to buy higher-mileage cars? Won't we think of this as we look out for our own financial interests?

If some of us decide against trading in our cars for more fuel-efficient ones, it means we have higher priorities than saving money on gasoline. Maybe we'll cut expenses elsewhere so we can continue driving less-efficient bigger, heavier cars. People without the governmental habit would understand that freedom means the right to set one's own priorities, regardless of what the neighbors or the politicians think. After all, "waste" is a meaningful term only in reference to specified objectives.

Energy conservation is just one example of the governmental habit. It is hard to think of any area of life where someone doesn't want to call in the constable to have his way. Don't like smoky restaurants? Fast-food joints offend you? Radio is raunchy? The wrong people want to marry? A company's wages are too meager? An American's prices are too high? A foreigner's prices are too low? The wrong people want to migrate here? Some folks use strange drugs? Online gambling is too popular?

For too many people the answer is the same: there oughta be a law. We've got to break this habit before it breaks us.

★ ★ ★

The USA PATRIOT Act is said to be narrowly targeted at suspected terrorists. But many firsthand experiences testify to its far wider swath. Gary Barnett, an investment consultant, reports on how it affects his business.

We're long used to paying property taxes on the real estate we thought we owned. But how would you like to pay a tax on the value of the view from your property? Gardner Goldsmith welcomes you to the future.

Economics demonstrates its scientific status by objectively identifying chains of cause and effect, such as the law of supply and demand. In part two of his three-part series, Israel Kirzner continues his discussion of how such an identification can be grounds for the economist's value-free policy advice.

The late Jane Jacobs single-handedly overturned the urban-planning orthodoxy through her learned books and activism. Sandy Ikeda, an economist much influenced by Jacobs, offers a tribute to this intellectual giant who never went to college and who didn't begin publishing until she was past 40.

Granted three wishes, some people might ask that they never have to stand in line at the DMV again. John Semmens knows a way to make that wish come true.

Scandinavia is a puzzle. That group of countries has bloated welfare states but also a reasonable level of prosperity and economic growth. What gives? Sara Cooper is our tour guide.

As sure as the rooster's crow follows the sun's first rays, rising gasoline prices will prompt someone to call for higher government fuel-efficiency standards for automobiles. Michael Heberling explains why the government should move to the sidelines.

One of England's most dedicated champions of liberty died earlier this year. Norman Barry pays tribute to the life of Chris Tame.

Our columnists have prepared an intellectual smorgasbord. Richard Ebeling examines "political leadership." Donald Boudreaux ponders libertarian paternalism. Robert Higgs discusses the consequences of government wartime "investment." Charles Baird takes up the history of the "right to work" movement. And Jude Blanchette, encountering the assertion that if we trust the leader, the content of the law is unimportant, protests, "It Just Ain't So!"

Books coming under scrutiny by our reviewers focus on equality, the threat of environmental degradation, the Constitution and economic liberty, and the market for human organs.

—Sheldon Richman
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We Should Trust the Leader, Not the Law? It Just Ain't So!

BY JUDE BLANCHETTE

Los Angeles Times columnist Max Boot has a message for the American people: put all your fears of diminishing civil liberties back in the closet; the good guys are running the show.

That, at least, was the message in his column last January, "The Wiretaps Shouldn't Bug Us," prompted by a 2005 *New York Times* article detailing a covert NSA program to collect intelligence from international phone calls involving American citizens without court approval. Backed by history and knowledge of human nature, critics of the program worry that it is ripe for abuse. These fears are unwarranted to Boot: "Muttering about 'slippery slopes' isn't enough to convince most people that fascism is descending. If the president's critics want that part of the nation that doesn't read the *Nation* to believe that he's a threat to our freedom, they'd better do more than turn up the level of vituperation. They'd better find some real victims—the Eugene Debses and Martin Luther Kings of the war on terror."

Boot imagines a populace snug in the speculation that the federal government is working to keep us safe. "No system is perfect," he writes. "But there isn't a scintilla of evidence that these were anything but well-intentioned mistakes committed by conscientious public servants intent on stopping the next terrorist atrocity." This, I suppose, means that we should all breathe a sigh of relief that the media hasn't uncovered signs of abuse.

"Trust government" is the prevailing sentiment among many people today. Viet Dinh, Georgetown law professor and chief architect of the PATRIOT Act, recently told a conservative audience, "None of us can make a conclusive assessment as to the wisdom of that program and its legality without knowing the full operational details. I do trust the president when he asserts that he has reviewed it carefully and therefore is convinced that there is full legal authority."

Rather than a Jeffersonian presumption of liberty and an inherent mistrust of government, Max Boot and others feel it should be given wide latitude so long as we like the individuals in power and there's no obvious evidence of abuse.

Rather than a Jeffersonian presumption of liberty and an inherent mistrust of government, Boot and others feel it should be given wide latitude so long as we like the individuals in power and there's no obvious evidence of abuse. If any attitude can be found counter to that which the country was founded on, it would be Boot's. To quote Thomas Jefferson, we "bind down those whom we are obliged to trust with power" with "jealousy and not confidence." We do not put our trust in men; we put our trust in laws. To confuse good men with good laws is a perilous mistake.

Aristotle addressed this question some 24 centuries ago: "We begin by asking whether it is more expedient

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to be ruled by the best man or the best laws." He concluded: "Therefore he who asks law to rule is asking God and intelligence and no others to rule; while he who asks for the rule of a human being is importing a wild beast too; for desire is like a wild beast, and anger perverts rulers and the very best of men. Hence law is intelligence without appetition."

Trust should be given sparingly to government, even (or perhaps, especially) when we support the individuals in power. Good intentions are never enough to secure the blessings of liberty. Trust in government is an anesthetic that often dulls the individual to the slow usurpation of freedoms. True, civil liberties have waxed and waned throughout the 218 years since the Constitution was ratified. The PATRIOT Act pales when standing next to the internment of Japanese citizens during World War II, and few can imagine the modern equivalent of Socialist Party candidate Eugene Debs's jailing under the 1917 Espionage Act. (This article is not the place to point out that there are, in fact, very real victims of the war on terror. But a jailing like that of Debs's is pretty well unimaginable—at least for the near future.)

Good intentions are never enough to secure the blessings of liberty. Trust in government is an anesthetic that often dulls the individual to the slow usurpation of freedoms.

The exhortation to trust government is all the more disconcerting when one considers the currency with which the government buys our loyalty: fear. As *Freeman* columnist Robert Higgs wrote in a recent article, "The people who have the effrontery to rule us, who call themselves our government, understand this basic fact [fear] of human nature. They exploit it, they cultivate it. Whether they compose a warfare state or a welfare state, they depend on it to secure popular submission, compliance with official dictates, and, on some occasions, affirmative cooperation with the state's enterprises and adventures. Without popular fear, no government could endure for more than twenty-four hours."

How odd, then, that while American citizens are whipped into a frenzy by threats domestic and foreign, intellectuals beseech them to trust their leaders. It is odd, but not irrational. As we saw in the immediate aftermath of September 11, national catastrophes rally the nation around its politicians.

This causal connection between threat and trust is not lost on America's political leaders. As political scientists Virginia Chanley, Thomas Rudolph, and Wendy Rahn have written, "Trust in government not only has implication for citizen compliance, but it also has more direct political consequences. Distrustful voters are more likely to support nonincumbent and third-party candidates and are more likely to express support for devolution of decision making from federal to state governments on issues. . . ." Thus, for politicians, trust breeds job security and centralized power. And unfortunately, the perception of threat is a catalyst for trust. To again quote Chanley, Rudolph, and Rahn, "[A]s public concern about international affairs increases, support for governmental authority will increase in the form of greater trust and approval."

Real Threats

This is not to say that politicians create foreign enemies out of thin air to solidify power. September 11 and other such horrors were not contrived deep within American government bunkers. But in relating potential and actual threats, an incentive exists to embellish.

So let us return to Max Boot. I suspect that if someone he dislikes ascends to the presidency, Mr. Boot's inherent trust of the executive branch will diminish, and with good reason. It will be at this point that Mr. Boot takes shelter behind the rule of law, questioning the constitutional legitimacy for every action the new president takes. All he or she need do, however, is cite the precedent established by the predecessor and quote the likes of Max Boot, who tossed overboard their fealty toward the rule of law and instead opted to trust the executive to wield the powers of state wisely. And when the last law was down, and the new president turned 'round on you, where would you hide, Mr. Boot, the laws all being flat?

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The USA PATRIOT Act and Finance: The Hidden Threat

BY GARY D. BARNETT

After 18 years in the investment business, a time I might add that has been rewarding in many ways, I am now truly questioning whether I should stay in this profession. It just isn't fun anymore. When it actually stopped being fun is hard to pinpoint, but why it stopped is not. Although we in this industry have always been regulated, or shall I say controlled, by Big Brother (Department of the Treasury, IRS, NASD, and SEC), we got along okay most of the time. But since September 11, 2001, things have changed dramatically, and not for the better; not better for the brokers and certainly not better for our clients, those hard-working individuals who save and invest and drive this country forward.

Although the USA PATRIOT Act is the tool being used, I don't want to give the impression that this single piece of legislation is the only problem. The attacks in 2001 enabled the government to expedite plans for more power, something it continually seeks just by its very nature, but can never acquire fast enough to suit its desires. Our founders warned us of this time and again. James Madison, in a letter to Thomas Jefferson on May 13, 1798, said, "Perhaps it is a universal truth that the loss of Liberty at home is to be charged to provision against danger, real or pretended, from abroad."

That statement has never been more true than it is today.

We investment advisers are now "agents" of the government, told to secretly watch our clients and report any "suspicious" activity. We even have an in-house czar, if you will, called the AML Officer, or Anti-Money-Laundering Officer. We are to report anything deemed suspicious directly to him, and he in turn will decide whether or not to turn this information over to the government for further investigation. These reports are called Suspicious Activity Reports (SARs); they are filed directly with the U.S. Treasury and made available to law enforcement and federal securities regulators. We are also required to verify the identity of and do a background check on any client opening a new account. This program is called the Customer Identification Program (CIP). An outside database is used to verify information supplied by the client. This is done every night by the firm, and results are received by the credit department the following morning. If a discrepancy arises—an address hasn't been updated, a digit is missed in the Social Security number, or the client's name happens to match one on a watch list—we are required to get additional identifying documents, such as a driver's license or passport, and to enter identifying numbers in the firm's database. This database, I might add, is open to the Treasury.

We investment advisers are now "agents" of the government, told to secretly watch our clients and report any "suspicious" activity.

I know some of you will say, "I don't have a brokerage account, so I don't have to worry about it." Really? So far I have only been talking about my own business, but all financial institutions are bound by law to keep an eye on you. The PATRIOT Act defines a financial insti-

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tution as almost anything. The list includes everything from convenience stores to travel agencies to auto dealers to insurance and investment companies. Even jewelry stores qualify. This unwarranted invasion will affect just about everyone at one time or another. Many will be affected regularly, and this will happen for the most part without their consent or knowledge. Are you beginning to get the picture?

Also, every account opened with our firm is checked against the Office of Foreign Asset Control (OFAC) list of countries and individuals "suspected" of being involved in money laundering, and even existing accounts are automatically checked against this list. Any branch disbursement check requested for any third-party recipient must be checked against the OFAC list. In addition, all disbursements made from the home office are checked, regardless of payee or recipient. This is now standard procedure and the law.

As brokers we not only have to watch our clients, we are also liable if we fail to report anything deemed suspicious and could face loss of license, fines, and/or imprisonment. "Suspicious" for our purposes could include:

- anyone wanting to do business who resides in a country deemed uncooperative by the government;
- anyone attempting to wire funds from his own account for no apparent reason;
- anyone opening an account and not investing right away; and
- anyone who makes multiple deposits.

We are also to be watchful for "high-risk" customers, such as offshore corporations, any charitable organizations, and all nonbank business, such as money-services businesses that provide check-cashing services. Also included are currency dealers, convenience stores, parking garages, restaurants, and others. "Others" is not explained, but I take it that we should be suspicious of everyone, or else. Our list of "suspicious activity" could include any account from a young first-time investor to a 90-year-old grandmother.

I have worked many years to build a good business and to build trust with my clients. What do I tell them now? Oh, by the way, I am now not only your broker but also a government spy. Don't worry though, you will never know when you and/or your accounts are being checked or investigated. It's a secret! This is beyond anything I could have imagined just a few years ago. I am now an unpaid, but threatened agent of the government. How absurd.

Does It Protect?

Why are so many in this country in favor of the PATRIOT Act? Do they actually believe this will protect them from all harm? Why are modern-day conservatives insistent that any and all power should be handed to this government in the name of safety? Given the financial aspects alone, why wouldn't conservatives and everyone else abandon their support for this invasion of our rights? If our entire financial business is constantly being watched and investigated without cause by government, what else is going on through the sweeping powers granted in the PATRIOT Act? Is this administration and the rest of the government really only wiretapping suspected terrorists, or is it much more far-reaching? These questions must be answered if we are to have any chance to regain and sustain our liberty.

No politician can change this course we're on. Only we as a people have the power to control our own destiny. If we do nothing, as seems to be the current plan, our God-given rights to life and liberty will continually be threatened. If left unchecked, government will continue to grow and in time will consume all.

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A Home with a View . . . and a Higher Property Tax

BY P. GARDNER GOLDSMITH

It took me years to understand what my father meant when, on being confronted by a disagreement in taste or talking about the price of a product, he would suddenly speak in Latin: *De gustibus non est disputandum.*

For someone who took four years of Spanish and couldn't even remember much of *that*, his statement was about as comprehensible as American Sign Language to a blind dog. But now, after studying economics, I can see abundant examples of my father's aphorism being put into practice.

Case in point: the New Hampshire "view tax."

What, you might ask, is a "view tax"?

Well, contrary to the hopes of many, it is not a tax placed on insufferable network chat programs broadcast before noon on weekdays (and, of course, supporting such a proposal would run counter to the very principle I am exploring).

The "view tax" is New Hampshire's property tax applied to a home's view, which is factored into the so-called valuation of the land. It received national recognition when David Fahrenthold in the *Washington Post* last year described the plight of Brad Wilder, a Plainfield, New Hampshire, resident who saw his property-tax bill skyrocket after an assessor added extra value to his land because of the "view."

According to the *Post* the value of Wilder's panoramic view of the White Mountains was fixed by the government assessor at $237,265, causing his tax bill to increase by $4,700. Like an improvement to his home, Wilder's view was deemed by the government to be worth a certain amount, and although he lives in the state where our motto is "live free or die," he will be forced to pay, or else risk losing his property.

The bright spot in the story is that the reporter came close to embracing a fundamental principle of free-market economics. Mind you, this was the *Washington Post*. Fahrenthold writes something more profound than he might think: "How do you value a view?" The question prompts a valuable lesson about the phrase *de gustibus non est disputandum.*

Roughly translated the expression means, "There is no disputing one's taste," and the wisdom of such a sentence is remarkable, for it not only applies to art, food, fashion, and innumerable other cultural stimuli we encounter every day; it also applies to property and work as well.

What my father understood is that the valuation of something, anything, is subjective. The Austrian school of economics has this phenomenon at the core of its theory of marginal utility. When one looks at property and toil, each of us values things differently, and it is impossible for government to produce any exact, objective measurement of that value.

But that doesn't stop government bureaucrats from trying. To levy their taxes, property assessors are hired by politicians to produce "objective measurements" of value for our homes, our garages, our lawns, our neighborhoods, and even our views. By looking at what they call "comparably valued homes" on the market, they create Byzantine formulae, backed by charts and graphs, which in the abstract constitute what some might think are believable and reasonable assessments of how much a certain kind of house, barn, yard, or view might fetch on the market.

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The trouble is that this abstract government construct is *not* the market, and only in the market, where people are free to value their property *themselves*, in peaceful exchange with others doing the same, can there be a momentary representation of the value of a product.

The core of the problem for government assessors is this: of value to whom? You might value a piece of property, or a sunset, or a picket fence differently from me. You might have a family and like knowing there is a pond nearby where the children can play. I might be bothered by the sounds of the bullfrogs calling out in the night from the shore. Each of us places a value on these qualities, and our opinions are as numerous and as varied as the entire population of the world allows. As a result, when a government assessor tries to objectify, for purposes of taxation or for any other reason, the value of our property, he is doing something that is literally impossible.

By turning to the "comparable value" theory of assessment, our friendly government bureaucrat can *try* to overcome this impossibility. He can attempt to approximate or assume the value of a home when placed on the market. But his assumption has within it the classic conceit that someone *not* involved in a transaction can tell others how they value their property.

Many bureaucrats might feel comfortable attempting to approximate what a piece of property will fetch on the market. The trouble is that the owner is not involved, and one cannot assume for him how he values his property, the view, or anything else in his life. An assessor may appeal to an exponent of the free market by saying that he is merely following the market itself, but again, the fatal conceit of his theory comes to the fore. He is not actually in the market, and neither is the homeowner on whom the tax will be assessed.

Only through a free exchange with an interested buyer can a proper price be determined, and even then, on the sale of the home, free-market economists understand that this price is momentary. Once determined by the participants, it is in the past, and though future exchanges of similar items may approximate this single transaction, and future players in the market may use the transaction as part of their assessment process, no future exchange can be precisely predicted by those not involved in new transactions, for it will take place with other participants, and thus other subjective valuations will be involved.

New Factors Upset Predictions

This is another key insight of the Austrians. The prices reflected in the market are not fixed, and cannot be used to perfectly predict the future, because there are always new participants entering the marketplace and new variations regarding supply and demand. It was with this insight that the Austrians came to the important conclusion that government attempts to objectively fix a value for a product now and in the future, and econometric models used by businesses to predict the future price of a product, are inherently unstable and useless. Unless the same small group of participants, engaged in a transaction under the same subjective circumstances with the same desires as they had in their first exchange, are the only players in the market, no precise prediction can be made as to the future value of a product.

The phrase *de gustibus non est disputandum* applies to each one of us, and does so as we travel through life. To assume, as a government "view tax" assessor must, that one has perfect knowledge of someone else's situation is the height of arrogance. Of course, just as one can never predict precisely what the market will do in the future, one can never underestimate the desire of government functionaries to get their hands on the fruits of our labor. There may be only one exception to the aphorism "there is no disputing one's taste," and that is when one considers the peculiar taste of government to tell us what to do with our money and how to value the important things in our lives.

In those cases disputation is certainly in order.

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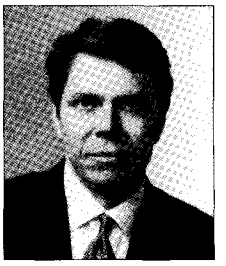

Libertarian Paternalism?

BY DONALD J. BOUDREAUX

Can paternalism and libertarianism be squared with each other? Two prominent scholars think so. University of Chicago law professor Cass Sunstein and University of Chicago economist Richard Thaler make a case for what they call "libertarian paternalism." Here's their argument.

A large body of experimental data, gathered mostly by behavioral psychologists and behavioral economists, shows that people's preferences aren't as concrete as mainstream (or even Austrian) economists suppose. An individual's revealed preferences depend to a surprisingly large degree on the manner in which choices are presented to him. Of particular interest is the "status quo bias"—which exists if an individual's preference for something is enhanced simply because that something exists.

For example, suppose when I am first hired I'm told I can sign up for a pension plan to which my employer will make matching contributions. Further suppose that all that I must do to sign up is to log on to my employer's website, click a few buttons, and fill in a short and non-intrusive form. The status quo is that I'm not enrolled in the plan, but I can enroll very easily at low cost.

If I don't sign up, the obvious conclusion is that I don't want to sign up; for whatever reason, for me the benefits of the plan fall short of its costs. The economist would then predict that were I instead automatically enrolled in the plan with the option of easily opting out of it, I would indeed opt out.

But behavioral scientists find that this prediction likely would be mistaken. If I'm automatically signed up for the pension plan with the option of easily opting out, I'm unlikely to opt out even though I would not have chosen to opt in had I *not* been enrolled.

I don't here question the finding that people frequently exhibit status-quo bias. Let's accept this finding as valid. Given that people do (for purposes of our analysis) have status-quo bias, what are the implications for economics and economic policy?

One obvious implication of status-quo bias is that each individual's preferences are less his own and more the product of his external circumstances: if I must opt in to the pension plan, my preference is that I not participate in it; if I must opt out of the plan, my preference is that I do participate in it.

> The fact is that society, even in our world of big government, is the unplanned, organic result of the actions of millions upon millions of people.

At first blush this apparent arbitrariness of personal preferences poses a real challenge to classical-liberal theory and policy. If people's wants are so heavily determined by the status quo, then we cannot conclude that the existing pattern of options open to consumers, and consumers' choices among these options, are superior to other feasible options and choices.

One response for the classical liberal is to point out that the observed choices that individuals make are still the choices of the individuals making them. So what if people generally stick with the status quo, whatever it may be? Sticking with the status quo is still a choice deserving respect.

Here's where Sunstein and Thaler's idea of "libertarian paternalism" enters. They say in effect, "No! The status quo itself inevitably is the result of someone's choice. And that someone is often the state. Indeed, the state typically cannot avoid determining what the status quo will be. So because the state cannot avoid

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choosing a status quo, it ought to choose the one that is best for people. (That's the paternalism part.) In addition, though, the state should permit individuals easily to opt out of the status quo. (That's the libertarian part.)"

Before I register my objection to Sunstein and Thaler's idea, I first commend their refreshing willingness to allow individuals to opt out of behaviors and settings. I would object much less strenuously to Social Security and Medicare, for example, if I could easily opt out of those programs. Presumably, Sunstein and Thaler would give me and others that freedom.

But what of Sunstein and Thaler's theoretical claim that "paternalism is inevitable" because the status quo inevitably is chosen by government? As they put it, "governments . . . have to provide starting points of one or another kind; this is not avoidable." It's here that I depart from these scholars. Their view—which Sunstein champions in many of his writings—is that society ultimately is the product of government design.

No Special Role

This claim is wrong. Government plays no special role in building society. True, at its best it helps to enforce the laws that are vital for society to exist—laws against unprovoked intrusions into the lives and properties of other people. Government, however, doesn't create these laws. (If your legislature accidentally repealed the statute that prohibits murder in your state, would murder then be legal in any meaningful sense?) Nor is government the only enforcer of such laws. Regardless of your opinion of the efficacy of vigilante justice, there is no denying that persons who offend a community's sense of justice typically are punished by the private actions of members of that community.

Modern governments also build roads, airports, schools, post offices, and other pieces of infrastructure. Infrastructure, of course, is necessary. But as with law itself, both theory and history teach that infrastructure can be supplied quite effectively by private market forces.

Unplanned Result

The fact is that society, even in our world of big government, is the unplanned, organic result of the actions of millions upon millions of people, sometimes acting individually and sometimes acting as members of groups, such as churches, firms, and government. Government's role, when it acts wisely and justly, is of no special importance. It makes no more sense to say that government "determines" the course of our lives than it does to say that farmers or carpenters or physicians determine the course of our lives. Each makes an important contribution, but not a contribution that is prior to, or more fundamental than, any of the contributions made by others. (Ironically, because no person or other institution rivals governments' power to destroy, governments' only truly unique role is found in its power to diminish people's wealth and freedoms.)

So while we all agree that government should operate as sensibly and as unobtrusively as possible, the same is true for every other institution in society. Obviously, at any point these institutions will offer us certain options. But even if we suffer a status-quo bias, a market society's vast decentralization ensures that any seriously harmful status quo will be displaced by a status quo that better encourages people to make wise choices.

A good status quo need not emerge from conscious, paternalistic designs. Instead, it will result from the competition over time of different institutions in society. A status quo that prompts better individual choices will displace one that prompts worse choices. Of course, no one can *prove* to everyone's satisfaction that such competition will improve the status quo—but, surely, no one can prove that intellectuals or politicians can "paternalistically" outperform such competition at discovering what the status quo should be.

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The Anatomy of Economic Advice

PART II

BY ISRAEL M. KIRZNER

How can positive science (consisting entirely of "is" statements) be translated into "ought" statements within the framework of economic understanding? In the first part of this series we drew attention to some of the paradoxes surrounding economic advice. In particular we drew puzzled attention to the *passionate* advocacy by Ludwig von Mises of free-market arrangements—the same Ludwig von Mises who insisted on an attitude of purest, disinterested *wertfreiheit* ("value-freedom") on the part of all social scientists. In the present article, as a step toward clarifying these paradoxes and puzzles, we discuss the nature of the strictly positive central propositions of economics. We shall find that a careful appreciation for the manner in which economic science accounts for the existence of chains of economic cause and effect can help us see how knowledge of these chains can sustain very definite ways of providing advice and guidance to economic policymakers. Statements describing chains of cause and effect are "is" statements. But, as we shall see, these statements *can*, in a carefully defined sense, generate the "ought" statements of which economic advice consists.

Cause and Effect in Economic Affairs

Economic science was established as a branch of knowledge in the eighteenth century, when the classical economists recognized that there exist systematic chains of cause and effect in economic phenomena (just as they exist in regard to physical phenomena). Although subsequent progress in economic theorizing radically altered the way in which economics understands economic cause and effect, it was the classical economists who, by establishing the idea of systematic chains of cause and effect, established the scientific discipline of economics.

The very perception of a scientific discipline of economics (or "political economy," as it was called by the classical economists of the late eighteenth and early nineteenth centuries) carries revolutionary implications for public policy. As Mises emphasized again and again, the discovery of regularities in economic phenomena means that statesmen concerned with public policy can no longer treat the economy as putty that they are free to mold into whatever shape they believe best for society. Every political act, every legislative constraint over economic activity, and every public subsidy must now be recognized as entailing specific consequences. Before instituting any tariff, before granting any right of monopoly, before printing any money, before imposing any kind of price control, those responsible for state policy must ask themselves whether they have fully taken into account *all* the consequences that are likely to follow from these actions. There *are*, the classical economists had shown, "laws" of economics that must be respected and taken into account if economic disaster is to be avoided.

The very perception of a scientific discipline of economics carries revolutionary implications for public policy.

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But how can such "laws" possibly exist? Surely an intuitive *impossibility* blocks any conceivable "laws" from existing. It is one thing to observe and understand regularities and causal or functional relationships in physical phenomena. But to expect such regularities and relationships in economic phenomena (which represent the outcome of the independently made decisions and actions of millions of freely choosing individual agents) seems to be glaringly counterintuitive. There seems to be no way of ensuring that freely choosing agents "obey" the regularities that a science might declare to be determinative.

This intuitive difficulty is the fundamental reason why both economic theorists and philosophers have, during the past two centuries, puzzled and argued over the very possibility of an economic science, and over its epistemological character. The present series of papers (and this one in particular) are informed by the insights and philosophical framework identified with the Austrian School of Economics, and especially with the thought of its leading twentieth-century representatives, Mises and F. A. Hayek.

In this framework the focus of attention is on the *purposefulness* of human beings, and on the way in which the expectations and knowledge of these human beings are *systematically* modified by economic experience. Changing economic experience alters the terms on which individual agents in fact find themselves able to choose; that experience also teaches agents where they had over-optimistically or over-pessimistically misjudged the terms on which others were prepared to trade with them; that experience also alerts individual agents to opportunities for the future that had hitherto not existed or that have until now not been noticed. Economic theory is able, in this analytical framework, to provide understanding of how exogenous changes in resource availabilities, technical knowledge, and consumer preferences may systematically change market phenomena, and thus determine the course of production and the patterns of resource allocation. To illustrate this approach to economic reasoning, let us take perhaps the most basic of the "regularities" in the market economy, the "law" of supply and demand.

The "Law" of Supply and Demand

This basic understanding of the behavior of market prices identifies the nature and the direction of the forces operating in the market for each product and for each resource. This understanding sees the market for any given item, be it a product for human consumption (such as milk or the services of an opera singer), or a resource (such as farmland for growing crops or the services of an engineering instructor for the training of engineers), as being continually modified by market experience in systematic fashion. At any given time "too much" or "too little" of the given item may be offered for sale (or sought to be bought). ("Too much" being offered for sale means that, *at current prices*, more of an item is being offered for sale than is being bought. "Too little" being offered for sale means that, at current prices, more of the item is being sought to be bought than sellers wish to sell.) *The "law" of supply and demand focuses attention on the existence of spontaneous market forces tending to "correct" these imbalances.*

> The "law" of supply and demand focuses attention on the existence of spontaneous market forces tending to "correct" market imbalances.

Where "too much" has been offered for sale, falling prices (for the relevant item) tend to encourage some ("marginal") sellers to cut back on its production and to encourage potential buyers to seek additional quantities for purchase. Where "too little" has been offered for sale, rising prices for the relevant item tend to encourage potential sellers to increase production (and thus the quantities they will offer for sale) and to discourage some ("marginal") buyers from continuing to buy. Were this process of adjustment in a given market to be permitted to continue indefinitely (that is, were the costs and techniques of production for the relevant item, on the one hand, and the preferences of the consumers, on the other, to remain indefinitely unchanged while market adjustments continued), the market for that item might be imagined to attain "equilibrium." Market equilibrium corresponds to the imaginary state of affairs in

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which neither "too much" *nor* "too little" of an item is being offered for sale. In such an imagined state of equilibrium there would be no scope for market forces to be set into motion. Prices and quantities offered for sale and sought to be bought are, in such an imagined state of equilibrium, such that no tendencies are set in motion for any of them to change.

Contrary to what many students of economics have been taught to believe, the "law" of supply and demand does *not* (when it is properly understood) declare that each market is at or near equilibrium at each moment. Nor does it declare (the less-objectionable form of the above) that markets tend rapidly to achieve equilibrium. Rather the "law" declares that, to the extent that a market, at any given moment, is *not* at equilibrium, this will itself set into motion forces predominantly pushing the market *in the direction* of equilibrium.

However, it should be understood and emphasized, the continual changes in the relevant exogenous variables (for example, the costs of production, the availability of resources, and the patterns of consumer preferences) will almost inevitably ensure that the equilibrium position for a market at any given moment is different from what that position was at any earlier moment. So the market forces unleashed by the disequilibrium conditions at one moment will almost certainly *not* ensure the attainment of equilibrium at any subsequent moment.

Nonetheless, it is reasonable to point out, the more gross imbalances present in the market at any given moment will, according to the "law" of supply and demand, tend to be corrected. An "oversupply" places pressure on prices to fall, discouraging marginal sellers from some production and encouraging additional purchases, and thus tending to eliminate the imbalance. A "shortage" operates in the reverse, but equally benign, direction. Let us examine why the elimination of these "imbalances" can legitimately be described as "benign." In the final article of this series, this will help us to understand the sense in which economic theory can, in scientifically objective fashion, promote sound economic-policy advice.

Market Imbalance—Why Is It Regrettable?

Let us consider the case of "overproduction" in a particular market (a market seen as isolated and insulated from other markets). Due to miscalculation or other error, the decisions of producers in this market have overestimated the eagerness of buyers to buy. The amounts offered for sale, and the prices expected and asked by potential sellers, are not matched by the decisions of potential buyers (and thus by the prices at which potential buyers expect to be able to buy, and at which they are willing to buy). This imbalance corresponds to decisions that have turned out to have been *disappointing*, and to decisions that turn out to have been *regrettable*. Some potential sellers (who might otherwise have offered to sell for lower prices, but who mistakenly held out for higher prices) are *disappointed* in that their plans to sell at higher prices cannot be successfully carried out. Those sellers may also *regret* their refusal to offer to sell at lower prices, or they may regret their decisions to produce in the first place. The failure of the decisions of some of the potential sellers to dovetail with corresponding decisions of potential buyers reveals the "error" of all of those decisions and is the source of both disappointment and regret.

A different, more accurate pattern of decisions, by *both* potential buyers and potential sellers, might have permitted them to achieve more successful fulfillment of plans than has in fact occurred. When a pair of market participants *might* have engaged in voluntary exchange *to mutual advantage* (for example, at a lower price), their *failure* to have done so (due to "error") seems, at least at first glance, to have been unambiguously unfortunate—for everybody. *Nobody*, it seems at first glance, has gained anything by the fact that potential steps to mutual advantage were not taken.

So, if we are correct in this judgment, the market process, which according to our "law" of supply and demand initiates continual market tendencies toward the correction of such imbalances, would appear to be benign. It tends to discover and to correct "erroneous" market decisions—that is, decisions which operate to frustrate the exploitation of potentially mutually gainful exchanges.

Although we have been careful to express this approving judgment (for the outcome of the "law" of supply and demand) strictly in tentative terms, we shall find that it in fact holds more robustly than we have suggested. As we shall see in the final article of this series, it tends to hold even when we drop the special assump-

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tions made in this section. There *is* a definite sense in which the "positive" theory of supply and demand leads ineluctably to an understanding of its socially benign character (that is, of its "normative" implications). We have in fact glimpsed here the basis for scientifically based economic *advice*. But the present article has not yet completed its exposition of the "positive" operation of the "law" of supply and demand. Before proceeding further we must explore more carefully exactly *how* this "law" achieves its magic—its tendency to correct market imbalance. We shall find that the "normative" discussion of this section can help us understand the "positive" operation of the competitive market process.

How the Market Works*

As we have seen, market imbalance reflects and expresses decisions that have been made in error. Market participants have been disappointingly left with unsold goods. Had they known this previously, they might have produced fewer units of these goods; they might even have gone into entirely different lines of production; or they might have been happy to have sold for lower prices (the only reason for their having failed to do so being their erroneous conviction that they could obtain higher prices).

Notice that this understanding of market imbalance refers, in effect, to *two* distinct kinds of error. One kind of error made by participants in the market we have considered is that mutually gainful exchange opportunities have simply not been taken advantage of. (Thus when market prices have been "too high," generating offers to sell that have been rejected, this is likely to mean that mutually gainful sales *could*, in principle, have occurred at lower prices.) A second kind of error has meant that some market participants have been led to *believe* (quite erroneously) that (*non*existent) opportunities for mutually gainful exchange really did exist. The first of these two kinds of error is thus *to fail to recognize existing opportunities*. The second kind of error is *to "see" opportunities which in fact do not exist*. One might describe the first kind of error as one of undue pessimism (failure to see opportunities really staring one in the face); the second kind of error might be described as one of undue and unjustified over-optimism. This insight can help us understand the process of market adjustment, the operation of the "law" of supply and demand.

Let us consider the errors of over-optimism. Whenever such an error occurs, it is discovered (and thus presumably corrected) almost *inevitably*. One's market experience *reveals* where one has been over-optimistic; the opportunities that one had over-optimistically expected to encounter simply do not happen. Such chastening experience tends, almost inevitably, to rein in over-optimistic market anticipations. Such experience "teaches" where and how more realistic expectations are in order. Where over-optimistic would-be sellers had, for example, refused to sell for lower prices (confidently, but erroneously, expecting to sell at higher prices), their disappointing experience in the market tends to teach them to lower their asking prices.

> The market process tends to discover and to correct "erroneous" market decisions—that is, decisions which operate to frustrate the exploitation of potentially mutually gainful exchanges.

But the *other* kind of error (that expressing undue pessimism) does not seem capable of "automatic" correction in any similar way. An opportunity (for mutually beneficial exchange) that was not seen today by the relevant parties (and therefore not taken advantage of) may not be seen tomorrow either (even if it still exists tomorrow). Let us take an example. If different prices for "the same" item have been prevailing in different parts of "the same" market, this is a scenario in which potentially mutually advantageous trading opportunities *have* existed, but have been missed. After all, in any market in which buyers have been buying at higher prices while some sellers have been selling at lower prices, we have a situation where these buyers and these sellers could obviously have benefited by trading *with each other* at some price

*Much of the material in this article, and especially the material in this section, is covered in greater detail in my monograph *How Markets Work: Disequilibrium, Entrepreneurship and Discovery* (London: Institute of Economic Affairs, 1997).

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lower than those higher prices at which the buyers have been buying, but higher than those lower prices at which the sellers have been selling. Clearly these market participants were simply unaware of what was going on elsewhere in this same market. But there seems no obvious manner in which such unawareness might be spontaneously replaced by superior market information. There seems no obvious way through which the market might tend to replace widely divergent market prices with less divergent prices.

It is here that the spontaneous market process depends on *entrepreneurial alertness* for one of the most fundamental (and widely recognized) tendencies in free, competitive markets: that prices for the same item do move toward a single price throughout the market.

Entrepreneurial Alertness

One of the less obvious, but nonetheless most powerful elements acting in markets is entrepreneurial alertness—the propensity of human beings to notice that which it is in their interest to notice. Sooner or later buyers paying unnecessarily high prices do tend to discover where they can obtain comparable goods at significantly lower prices. Sellers selling for unnecessarily low prices do tend to discover where they can find buyers willing to pay higher prices. Moreover, sooner or later entrepreneurs will discover that they can grasp pure profit simply by buying at the lower prices and selling at the higher prices. We do feel convinced that widely diverging prices in the same market for a given product or resource will give way in this fashion to competitive forces tending to push these diverging prices toward each other. Errors of undue pessimism do tend to be corrected in this way—as a result of entrepreneurial alertness.

One of the less obvious, but nonetheless most powerful elements acting in markets is entrepreneurial alertness—the propensity of human beings to notice that which it is in their interest to notice.

So the "law" of supply and demand explains chains of economic causation along each of two distinct dimensions. First, as we have seen earlier, it operates toward the correction of market imbalances for given items. Second, it operates to correct such imbalances at the same time as it corrects the phenomenon of divergent prices for each such item. The forces of supply and demand operate to correct "wrong" decisions that are unduly optimistic, at the same time as it operates to correct "wrong" decisions that are over-pessimistic.

The Broad Scope of Our Analysis

Our discussion thus far has been extremely simple both in its assumptions and its substance. We have talked of the market for a "given item" while assuming this market to be isolated and insulated from all other markets. When one broadens one's analytical perspective to include the markets for innumerable products and resources that may be bought and sold, and to include not only simple buying and selling decisions but also decisions on what to produce and how to produce, it might appear that we are now in a world of mind-boggling complexity, for which our simple analysis has little relevance. But this is *not* the case. The insights of the previous sections do have immediate relevance even for the most complicated of interlocking markets.

Consider, for example, a market in which a particular item C is produced by combining input A with input B, in accordance with some production recipe. Imagine that such production is highly profitable. The combined costs of inputs A and B are, at a given level of output, significantly lower than the revenue obtainable from selling C in the consumer-goods market. This scenario may seem fairly complicated (in comparison with the scenarios discussed earlier). But we should notice that this scenario is one in which buyers are paying higher prices than necessary, and sellers are selling at lower prices than necessary—exactly as in the single-item market discussed in the preceding section. Thus those selling A and B at prices summing to less than the price being paid for C *could*, in principle, have produced C and sold it for the higher price (since *only* A and B are needed to produce C). The profitability of this line of production results

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from a (disguised) divergence of prices "for the same item" in the same market (that is, it results from the circumstances that *everything* needed to produce C can be bought for less than the market price for C). Thus this profitability can be expected (unless we postulate monopolistic control of access to resources A and B) to tend to attract competitive entrepreneurial attention. This will tend to eliminate the profitability of this line of production (by pushing the price of C and the sum of the prices of A and B closer together).

Although this is not the place to do so, similar analysis can demonstrate the broad relevance of our earlier discussion of the "law" of supply and demand to key aspects, at the very least, of complex market scenarios.

Cause and Effect in Economic Affairs

Our discussion has illustrated the way in which simple economic theory accounts for the existence of definite and systematic chains of cause and effect in economic affairs. There do exist definite ways in which economic decisions made in any one period tend to take systematic account of the other decisions being made in the same markets. In this way decisions do mold each other in systematic fashion. And we have seen how the manner in which such "molding" tends to occur appears, at least at first glance, to deserve being called "benign." This simple analysis will help us understand, in principle, how economic theory can lead toward making judgments on the "goodness" of specific policy initiatives through an understanding of the likely consequences of such initiatives.

We are now ready to tackle, in the final article in this series, the question posed at the beginning of the first article: Can positive economic understanding be translated into scientifically objective and valid *economic advice*?

In the October issue of *The Freeman*

The Anatomy of Economic Advice, Part III

by Israel M. Kirzner

Export-Led Recovery, Multipliers, and Other Fanciful Notions

by Christopher Lingle

What's Going on in France?

by Pierre Garello

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Jane Jacobs

BY SANDY IKEDA

Jane Jacobs, one of the most important and influential public intellectuals of the twentieth century, died last April, a few days shy of her ninetieth birthday. The intellectual legacy she left for social theorists is as significant as that of anyone else of her generation.

She was the author of nine books, including *The Economy of Cities* (1969), *Cities and the Wealth of Nations* (1984), *The Nature of Economies* (2000), and her most famous work, *The Death and Life of Great American Cities* (1961). She also published an article in the prestigious *American Economic Review* ("Strategies for Helping Cities," September 1969). Most are surprised to learn that she held only a high-school diploma and began her book-writing well past the age of 40.

Jane Jacobs

In her first book, *The Death and Life of Great American Cities*, Jacobs argued that the urban planners of her day, infected by the top-down collectivist ideology that was the conventional wisdom among nearly all intellectuals, ignored the perspective of ordinary people on the street. Her position, radical for its time, was that real cities don't conform to one person's or group's aesthetic ideal because visual order is not the same as actual social order. She argued that complex social orders, such as a city, begin with ordinary people forming informal relations with one another in the neighborhoods in which they live, play, or work. Such networks emerge and thrive when people are able to have free and casual contact with acquaintances and strangers alike in the safety of streets, sidewalks, and other public spaces.

But most of that safety is achieved not by aggressive formal policing but by voluntary recognition and informal enforcement of local norms. The key is for each neighborhood or city district to have sufficiently diverse attractions at different times of the day, what is sometimes today called "mixed uses," so that there are lots of different people pursuing their own plans around the clock. The people who use the schools, places of worship, stores, offices, residences, workshops, theaters, and restaurants located in the same vicinity help to make it interesting and attract still more people, who encourage still more diverse uses. When it is lively enough, an area becomes safe and feels safe, which, as Jacobs argued, is a bedrock attribute of any successful city. All this is done on its own.

Jacobs was not opposed to all government planning at the local level. She thought that zoning could be used to prevent too many large single uses in a given neighborhood, for example, several car dealerships or office buildings that would dominate and stultify the life of a street. For the same reason she argued that official municipal buildings, courthouses, and such should be strategically placed around the city, rather than collected into a single civic mall.

But to the end she remained skeptical of urban planners, even those such as the so-called New Urbanists, who have adopted some of her design principles but not her sensitivity to how the healthiest communities are

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those that arise spontaneously over time. Large-scale visions of the ideal city, modernist and postmodernist alike, that seek to impose a visual order or a unified aesthetic principle on *seemingly* chaotic social orders ignore what Jacobs called the "locality knowledge" of unwritten rules and unseen interpersonal relations possessed by the people who live, work, and play in a neighborhood. Actually implementing those visions, as for example Lincoln Center in New York or Brazil's capital city of Brasilia, undermines or leaves no room for the foundations of the underlying social networks that generate safety, trust, and, ultimately, creativity in commerce and art in an unplanned but coordinated way.

Two of the books that followed represent a logical extension of Jacobs's micro-based approach to understanding social order. Thus, as others have observed, if *Death and Life* shows how cities are composed of neighborhoods and districts, *The Economy of Cities* explains how cities depend on one another for economic development and expansion, and *Cities and the Wealth of Nations* explains that the global economy is a dynamic network of great cities, some living, some dying, that are interdependent to a degree that only now are we beginning to appreciate.

(I once asked her what she thought her most important contribution to economics was and she answered, "the discovery of the fractal"; that is, the idea associated with modern chaos theory that complexity exists symmetrically at different orders of magnitude—"a universe in a grain of sand." What I think she meant was that the same kinds of emergent forces and complex network relations that support dynamic neighborhoods appear again at the level of the city, the region, and ultimately on a global scale.)

But more than this, these books, especially her second, represent a consistent development of the methodologically individualist approach she takes in her first. Nearly 40 years after *Death and Life* came *The Nature of Economies*. In less than 200 pages Jacobs provides a distillation of her economic framework, written engagingly and with characteristic originality in the form of a dialogue among friends. She bashes standard economic theory, which is based, as she puts it, on a simplistically static "plantation mentality." Those familiar with the economics of Ludwig von Mises, F. A. Hayek, and Israel Kirzner will find not only an astonishing overlap between Jacobs's paradigm and contemporary Austrian economics but also a richer and more insightful set of analytical tools. To take just one example, I believe her analysis of what she calls "dynamic stability" is superior to the current Austrians' analysis of the analogous concept of the "market process."

In 1992 Jacobs published what is perhaps her most libertarian book, *Systems of Survival*, although she always disliked being ideologically pigeonholed. In it she argues that there is a set of virtues, or system of survival, appropriate to action in the market, the "commercial syndrome," that is distinct from that of government, the "guardian syndrome." The former syndrome includes: shun force, be honest, and collaborate easily with strangers and aliens; the latter: shun trading, exert prowess, and deceive for the sake of the task, among others.

She argues that as long as the agents who operate in these two spheres consistently adopt the systems appropriate to their respective areas of activity, especially when they have both market and governmental roles, things will be okay. Mixing the two, as when the government tries to operate according to business practices or when private persons attempt to use political power to achieve private ends, creates what she calls "monstrous hybrids" that result in moral confusion and contradictions.

Warmth, Humanity, Common Sense

When I first met her a few years ago, Jacobs had just published her latest book, *Dark Age Ahead* (2003) and was planning to write at least two more. Besides the common-sense genius of her ideas, what stands out in my memory is her warmth and profound humanity, which in a sense I think grounds all of her writings and activism. It is, for example, the perspective of flesh-and-blood people that serves as the starting point of her explanation of how cities and civilizations work. From the perceptions of ordinary persons emerge the social ties that promote safety, trust, and ultimately dramatic economic development and social change. Casual, informal contact, especially among relative strangers in public spaces, is for Jacobs the small change from which a city's wealth is built.

As an economist working in the tradition of Mises,

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Hayek, and Kirzner, what have I learned from Jane Jacobs? In short: Densely populated settlements that embody a wide diversity of both skills and tastes are the incubators of dynamic social development and entrepreneurial discovery—Density + Diversity → Development and Discovery—and that government intervention tends to undermine the free air of cities in which even ordinary people can do extraordinary things.

Jane Jacobs was no ordinary person, however. She managed through her books to dramatically change the face of the urban landscape. But she was merely preaching what she practiced. Her writings reflect not only her reading and seeing, but also her doing. Among other accomplishments as an activist, she and other community leaders in the 1960s managed to stop a federally funded project to bulldoze a freeway through what is today one of the most vibrant districts in Lower Manhattan. And this was against one of the most intimidating figures in New York history, the "power broker" Robert Moses.

Although we will sorely miss the two books she had yet to write, those she left behind offer bold ideas to build on and to critique. Her humanistic approach to doing social science continues to inspire activists and intellectuals across the ideological spectrum.

The Wisdom of Jane Jacobs

"[N]obody, including the planning commission, is capable of comprehending places within the city other than in either generalized or fragmented fashion. . . . They do not even have the means of gathering and comprehending the intimate, many-sided information required, partly because of their own unsuitable structural inadequacies in other departments. Here is an interesting thing about coordination both of information and of action in cities, and it is the crux of the matter: The principal coordination needed comes down to coordination among different services within localized places. This is at once the most difficult kind of coordination, and the most necessary."

"But automobiles are hardly inherent destroyers of cities. If we would stop telling ourselves fairly tales about the suitability and charm of nineteenth-century streets for horse-and-buggy traffic, we would see that the internal combustion engine, as it came on the scene, was potentially an excellent instrument for abetting city intensity, and at the same time for liberating cities from one of their noxious liabilities."

—*The Death and Life of Great American Cities* (1961)

"But I propose to argue that these grave and real deficiencies are necessary to economic development and thus are exactly what make cities uniquely valuable to economic life. By this, I do not mean that cities are economically valuable in spite of their inefficiency and impracticality but rather because they are inefficient and impractical."

—*The Economy of Cities* (1969)

"Nations are political and military entities, and so are blocs of nations. But it doesn't necessarily follow from this that they are also the basic, salient entities of economic life or that they are particularly useful for probing the mysteries of economic structure, the reasons for rise and decline of wealth."

"To rulers who want to know and control, as far as they can, what is going to be produced five years in the future and where it is going to be produced and how, and then five years beyond that, and so on, volatile intercity trade, forever unpredictably and opportunistically changing in content, represents sheer chaos. Of course it is not chaos. It is a complex form of order, akin to organic forms of order typical of all living things, in which instabilities build up (in this case, funds of potentially replaceable imports) followed by corrections, both the instabilities and the corrections being the very stuff of life processes themselves."

—*Cities and the Wealth of Nations* (1984)

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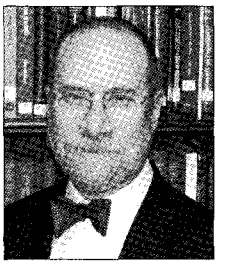

Is the Income Tax Unconstitutional?

BY SHELDON RICHMAN

Wishful thinking, always a temptation, is hazardous. Example: An awful lot of people think the income tax as it applies to private-sector wage earners is illegal—even unconstitutional—and they assume that if they can only come up with the right legal arguments, judges will strike down the tax and make America a free society once more. Some of those people are in prison today.

It would be nice if their wish came true. But it's not going to happen, for reasons I will discuss here. This is another example of Richman's Maxim: There's no shortcut to a free society. Since there will be no magic bullet, we will have to advance freedom the old-fashioned FEE way, by becoming as knowledgeable and articulate in our advocacy as possible in order to attract those who hunger to understand freedom. Nothing less will do.

So what about the income tax? There is no shortage of arguments that the income tax is illegal, even unconstitutional. It's been said to violate the Fifth Amendment guarantee against self-incrimination, that it's really voluntary, that Federal Reserve Notes aren't money, and on and on. Most curious is the argument that the income-tax law was never intended to tax wages and salaries earned in the private sector because the lawmakers knew such a tax would be unconstitutional. There are several variations on this theme, and here I can discuss only the broad issues. (Admittedly this leaves me open to the charge that I have not addressed a particular variation. But they all suffer from a similar flaw.)

Let there be no misunderstanding over what I am about to say: The income tax is immoral on many levels. It permits the government nearly unlimited access to the people's wealth. It opens the door to inquisitorial intrusion into their private affairs. And it introduces such complexity into the law that everyone is a potential criminal.

Three strikes—why isn't it out?

Alas, something can be immoral and yet legal and constitutional. That's the fix we're in.

Some people argue that the Sixteenth Amendment to the Constitution is unconstitutional. But the Constitution sets up a virtually open-ended, if onerous, amendment process. The framers excluded only three subjects from amendment (the importation of slaves and apportionment of direct taxes, which expired in 1808, and equal state representation in the Senate). An amendment to the Constitution therefore cannot logically be unconstitutional. (An unrelated argument is that the Amendment was not properly ratified by the states. Needless to say, the courts established by the Constitution disagree.)

Some legal critics of the tax accept the Amendment, but argue that it is misunderstood and therefore the 1913 income-tax law has been wrongly applied to private-sector wages and salaries. But the misunderstanding is in the people who make this argument. Let's get straight why the Amendment was proposed. It is widely believed that the U.S. Supreme Court in 1895 declared income taxation *in itself* unconstitutional, making the Amendment necessary if the feds were to grab part of our paychecks. This is wrong. The Supreme Court's 1895 *Pollock* ruling did not strike down the principle of income taxation. All it did was declare taxation of income *from real and personal property* unconstitutional when it is not apportioned among the states. Taxing wages and salaries was fine as far as the Court was concerned. The only reason it struck down the entire law was that the justices assumed that Congress did not intend that *only* wages and salaries be taxed.

To understand the Court's reasoning we have to take up the distinction between direct and indirect taxation. The Constitution requires that direct taxes be apportioned according to the populations of the states, while indirect taxes must be uniform throughout the states.

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This seems straightforward, until you appreciate that the framers had no clear idea what's a direct tax and what's an indirect tax. Such heavyweights as James Madison, Alexander Hamilton, and Fisher Ames couldn't agree. In America income taxation has long been regarded as indirect, a kind of excise. But in England it has always been regarded as direct.

The Court in 1895 confirmed that income taxation *usually* is indirect and therefore does not require apportionment, only uniformity. But it found an exception. Taxing income from real and personal property, the Court said (dubiously), is like taxing the property itself, and so, in effect, is *direct* taxation—thus requiring apportionment. Since the law passed by Congress in 1894 did not contain an apportionment clause, that part was held unconstitutional, and so the whole thing fell.

The Sixteenth Amendment had one purpose: to eliminate the apportionment rule when the *source* of the income being taxed turns what looks like an indirect tax into a direct tax. That's why the Amendment says: "The Congress shall have power to lay and collect taxes on incomes, *from whatever source derived*, without apportionment among the several States, and without regard to any census or enumeration." (Emphasis added.)

Ever since, the courts have emphasized that the Amendment gave the federal government *no new power* to tax. All it did was remove from consideration the source of income being taxed and thereby eliminate a restriction on Congress's taxing power.

The income-tax law passed in 1913 under the newly ratified Amendment was upheld by the Supreme Court in 1916 in the *Brushaber* case. Here the Court embraced the broadest possible interpretation of the federal taxing power—a power that, the Court said, predates the Sixteenth Amendment. The Court said: "That the authority conferred upon Congress by 8 of article 1 'to lay and collect taxes, duties, imposts and excises' is exhaustive and embraces every conceivable power of taxation has never been questioned. . . . And it has also never been questioned from the foundation . . . that there was authority given, as the part was included in the whole, to lay and collect income taxes. . . ." The Court went on to acknowledge: "the conceded complete and all-embracing taxing power"; "the complete and perfect delegation of the power to tax"; "the complete and all-embracing authority to tax"; and "the plenary power [to tax]." That was just in one paragraph. Later in the opinion we find this: "[T]he all-embracing taxing authority possessed by Congress, including necessarily therein the power to impose income taxes. . . ."

In the succeeding 90 years, no Supreme Court has contradicted the holding in *Brushaber*.

Facing the Facts

Where does this leave liberty's advocates? First, we have to face the facts. Like it or not, the U.S. Constitution empowers the Congress to levy any tax it wants. Anyone is free to come up with a contrary interpretation, but the constitutionally endowed courts have spoken. Reading one's libertarian values into the Constitution is futile. For better or worse, the Constitution means what the occupants of the relevant constitutional offices say it means. The battle over the taxing power occurred long ago—in 1787 between the Federalists and Antifederalists, before the Constitution was ratified. Under the Articles of Confederation, Congress had no power to tax; it could only ask the states to raise money. When the Constitutional Convention proposed to give the central government that fearsome power, the Antifederalists objected, predicting that terrible things would issue from such power. As one Antifederalist warned, "By virtue of their power of taxation, Congress may command the whole, or any part of the property of the people." Alas, the Antifederalists lost. We will get nowhere if we pretend that this history does not exist.

Confiscatory taxation (but I repeat myself) will never be abolished through arguments that are too clever by half. When the people and their political culture (the real constitution) demand removal of this government burden, it will be removed. Therefore, if freedom is to be won, it will only be through the sort of painstaking educational activities that FEE has engaged in for 60 years.

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Privatize the DMV

BY JOHN SEMMENS

For most Americans, driving is the most dangerous activity they undertake on a regular basis. We ought to try to make the roads as safe as is humanly possible. Unfortunately, government ownership of the roads and the vehicle-registration/driver-licensing process undermine safety. In "Highways: Public Problems and Private Solutions" (*The Freeman*, March 1985), I wrote about privatizing the roads. Now I will examine the possibility of privatizing registration and licensing.

One approach governments have adopted to deal with the hazards of driving is mandatory insurance. In 44 states plus the District of Columbia, liability insurance is a requirement for vehicle registration. Still, many vehicles lack insurance. The Insurance Research Council has estimated that about 14 percent of motorists in the nation operate uninsured vehicles.

Uninsured vehicles, of course, are only half the problem. Other vehicles are grossly underinsured. Most states that require insurance allow absurdly low minimum amounts of coverage. Arizona, for example, permits vehicles to be operated with liability coverage as low as $15,000 for bodily injury to a single victim, $30,000 for multiple victims, and $10,000 for property damage. It doesn't take much of a wreck to "total" a car. Replacing one "totaled" car could easily cost more than $10,000. Considering that, according to the National Highway Traffic Safety Administration, about 85 percent of the traffic accidents in the United States involve more than one vehicle, it should be readily apparent that many crashes will produce property damage in excess of the minimum mandated coverage. As it is, the *average* cost of a "property damage only" accident is in the thousands of dollars. Minor-injury accidents result in costs *averaging* nearly $18,000 per accident. Major-injury accidents generate an *average* cost of $55,000. Fatal accidents produce damages in the million-dollar range. Next to this, the typical $15,000 to $30,000 coverage for injuring or killing someone is hopelessly inadequate.

So "mandatory" insurance creates a false sense of security.

There are two models useful in analyzing this situation. On the one hand, we could view roads through the "ballpark" model. In the ballpark customers are warned that the management assumes no responsibility for any injuries or damages in the normal course of the game. If this model were applied to roads, anyone who purchased the necessary licenses and vehicle registrations would have access. Drivers venturing onto the roads would do so at their own risk and with the explicit warning that they might be harmed by others who were unable to pay compensation. Road users would determine whether to buy insurance or not.

The chief advantage of the "ballpark" model is that it would remove the ambiguity regarding who should bear the responsibility for insurance. No one could claim that the government has guaranteed that other drivers are insured. Knowing there are no insurance requirements would inspire those who want to be indemnified against damages to purchase their own adequate levels of coverage.

The chief disadvantage of the "ballpark" model is that driving might become more financially risky. Those without insurance could easily sustain losses that could bankrupt them. Those who do purchase insurance might well have to buy substantially larger amounts of cover-

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age since there may be more uninsured drivers. So even though the total number of vehicle crashes and the social cost of traffic accidents would likely be lower, the increased incidence of bankruptcy among the uninsured and the subsequent redistribution of financial burdens to those who are risk-averse might be viewed as undesirable.

An alternative to the "ballpark" model is the "Disneyland" model. In Disneyland, customers are covered by the business's liability insurance. Consequently, the management sets its own risk-reducing restrictions, such as barring some customers from some rides and attractions. Since the business is held strictly liable for any damages suffered by those entering the park, management will strictly enforce its rules.

Like the "ballpark" model, the "Disneyland" model applied to roads would also reduce the ambiguity concerning who will be responsible for damages. Enforcement of the insurance requirement would be best achieved by having insurers issue the licenses and vehicle registrations. This differs from the current system in which the mandatory insurance is sold by private vendors, but is enforced by a state agency. The government charged with enforcing mandatory-insurance laws assumes no liability for damage done by drivers who fail to comply. Thus there is no significant financial consequence for not enforcing the mandate.

If the current weakly enforced laws were to be replaced by a fully privatized system based on the "Disneyland" model, there would be a much stronger incentive to see that all vehicles had adequate insurance coverage. This would also help to keep the worst drivers off the roads. If insurance companies had to accept full liability for whomever they issued a driver's license and vehicle registration, the problem of "underinsureds" would vanish. Bad drivers would not have the option of buying a woefully inadequate policy. They would be required to pay the full cost of their actuarial risk in order to obtain a driver's license and vehicle registration. The insurance company would see to this as a matter of business survival.

Given the significant uncompensated costs inflicted on victims of underinsured and uninsured drivers, a coherent solution is needed. The contrasting "ballpark" and "Disneyland" models offer this. While each model is likely to make the roads safer, the "ballpark" model does this by imposing more of the burden on the cautious drivers. The "Disneyland" model would make the roads safer by removing more of the high-risk drivers.

Disneyland in Detail

Let's look in detail at how this model might work. If insurers issued licenses and registrations it would be absolutely clear who was legally responsible for a particular vehicle being on the road. Insurers would have a strong incentive to make sure that every vehicle and driver they insured had adequate coverage. They would also have a strong incentive to keep uninsured vehicles and drivers off the roadways.

To clarify financial responsibility for potential damages, the privatization law would state that as long as a vehicle bore the license plate of an insurer, that insurer would be held liable for any damages caused by that vehicle. With this kind of provision it is likely that insurers would only issue plates after thoroughly testing the skills and investigating the driving records of customers. If an insurer was not satisfied that a prospective customer is truthful or a good risk, it could refuse to issue a policy. Under privatization, suspect applicants would not be able to use the roads legally until they found an insurer willing to issue a policy and its verifying license plates.

Since issuing an auto insurance policy and license plates would be simultaneous, the uninsured would be easier to spot than at present. Indeed, given the greater degree of responsibility placed on each insurer, it seems likely that steps to improve the visibility of license plates would be taken. For example, the much-tested, but little-deployed electronic license plate would likely be a widespread innovation, permitting plateless vehicles to be detected by automated means.

The dodge of buying insurance just to obtain a registration tag and then canceling the insurance once the tags were received would become much more difficult. Since the insurer would be responsible for damages, it would have a strong incentive to require a substantial payment or deposit refundable only when the plates are returned. Given the many insurance-sales locations and computer networks, obtaining or returning plates ought to be a lot more convenient than dealing with the DMV.

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Individuals would be free to shop for the best license, registration, and insurance deal they could find. Each insurer would be free to establish its own criteria for issuing policies and license plates. Some insurers may cover only low-risk drivers. Others may cover high-risk drivers at correspondingly higher premiums. Some insurers may wish to give written and/or road tests to prospective customers. Some insurers may want to conduct regular safety inspections of their customers' vehicles. Others may wish to encourage or require some or all the vehicles they insure to be equipped with safety-enhancing devices (for example, an ignition that can only be activated after the driver passes an automated, on-board breathalyzer test). Customers may choose to accept some limitations on driving in exchange for lower premiums (for example, driving only during daylight hours). Others may prefer to pay more to escape restrictions. In short, there is likely to be a wide variety of payment/license/registration options available. Nevertheless, those who could not meet the minimum requirements of *any* insurer would not be issued vehicle plates. The streets would be safer.

Potential Benefits

The potential benefits would occur in two areas. Privatizing vehicle registrations would shift costs from innocent victims of bad driving to those who cause the accidents. As the perpetrators of damage were forced to bear a larger share of the consequences of their actions, we could expect some modifications in their behavior. To remain profitable, insurers would have to be good at matching premiums to risk. This would motivate them to reduce risk. A price structure that accurately reflected risk would push drivers toward safer behavior. So over the long run, not only would uncompensated losses be shifted back to those at fault, total losses also would likely be reduced.

The other source of potential benefits would come from eliminating functions of the state departments of transportation. If we privatized the registration and driver's license functions, we could probably reduce government spending by about $3 billion per year.

The potential for "one-stop-shopping" convenience under full privatization is substantial. One could buy a car and get it registered and insured all at one location. The insurers and auto dealers would have an incentive to make the process as expeditious as possible. In fact, competition among insurers and dealers would help promote efficiency and convenience.

Consider a typical transaction with the current DMV. It's your lunch hour. You have chosen this opportunity to take care of some business down at the department. Your first task is to find the nearest branch office. They're not always conveniently located. They're certainly scarcer than any other auto-related business location. As your search for the nearest office drags on, you pass numerous gas stations, a half-dozen auto-parts stores, several auto-insurance offices, and a few auto dealerships.

Finally, you locate the DMV office. You walk in and get in line. But your advance to the head of the line is slowed because many employees have chosen this time to take lunch. When your turn finally arrives you are greeted by an employee whose occupation has ranked last in a survey of civility. You think the service could be more convenient, expeditious, and courteous, but it isn't and won't be likely to get that way. The monopoly position of the state agency pretty much assures that it won't. It is not as if you could take your "business" elsewhere.

Shifting the vehicle registrations and driver's licenses to the private sector would require legislation. This proposal would likely be resisted by the DMV bureaucracy. After all, if the agency is no longer needed to register motor vehicles or issue driver's licenses, we may well question whether it is needed at all. At the very least, we may be talking about a 50 percent cutback in its budget. Hundreds of people would see their government jobs eliminated. These prospective consequences would inspire objections.

We may also expect some initial opposition from the auto-insurance industry. At the outset the increased responsibility would provoke uncertainty. New means of coping with this uncertainty would have to be learned. However, once the insurers understood that they would be compensated by their customers for the costs of issuing registrations and licenses, and that privatization would not require them to provide subsidies to high-risk drivers, they should be more receptive to the idea. The opportunity to play a more direct role in control-

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ling the risk of the roadway should be perceived as a means of reducing underwriting losses over the long term. As the roads become safer, insurers' losses would fall. (Ultimately, premiums would be expected to fall as well, but not as rapidly as underwriting losses.) In addition, many of those currently evading the insurance mandate would become the reluctant customers of the insurance industry. Lastly, many of those currently underinsuring their vehicles would be required by insurers to buy adequate coverage. All this should improve insurer profitability.

The general public may be apprehensive about letting private-sector insurers decide who gets on the roads. But it seems odd to prefer having that determination made by a bureaucracy with no responsibility for its decisions. We have grown accustomed to allowing businesses to decide who obtains credit, and we expect the decisions to be made on rational criteria. And they are. Reflection on how the private sector has handled this vital segment of contemporary life should help to alleviate some of the public's apprehension.

Of course, that segment of the population that is currently flouting the insurance mandate or exploiting it by underinsuring their vehicles would be expected to raise quite a fuss. While we should not be persuaded by the objections of those who wish to continue passing the burdens of their own risky driving on to others, we can envision some means of addressing their legitimate concerns.

The case most deserving of sympathy is that of the individual whose past driving has taught him a lesson. It is unfortunate for such individuals that many more proclaim to have learned lessons than actually have. Consequently, individuals with bad driving records would undoubtedly have trouble obtaining insurance and permission to use the roads. We should expect insurers to establish methods of serving this market niche. One method would be to require the vehicle of such a person to be equipped with devices that enhance safe operation. We already mentioned the possibility of a breathalyzer-ignition link. Other options could include vehicles that could only run during daylight hours (perhaps having a solar-collector connection to the engine or transmission) or vehicles whose maximum speed could not exceed a low setting (perhaps having "speed governors" placed on the engine). Insurers might want to require periodic safety inspections of the vehicle as a condition of issuing a registration. They might see fit to require regular driving tests for those whose driving behavior has been demonstrated to be more hazardous than average.

Some high-risk but repentant drivers could work toward a full reinstatement of driving privileges by demonstrating meritorious performance under limited driving privileges. For others, though, the outlook will be less sanguine. There are some people who should not be behind the wheel. Stopping them from driving not only helps to preserve the health and lives of others, but also may save the driving-deprived individual from injuring or killing himself. Incompetent drivers must find other means of meeting their transportation needs.

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Scandinavian Irony: Socialism Meets Liberalization

BY SARA F. COOPER

Scandinavia is in the midst of an economic transformation. Thanks to tax reform, openness to investment/trade, sound property rights, little corruption, and continuing efforts to privatize, economies there have made great strides toward liberalization. Denmark, Finland, Iceland, and Sweden have been rated "free" economies by the Heritage Foundation's 2006 *Index of Economic Freedom* (online at www.heritage.org/research/features/index/countries.cfm). Norway lags behind with a "mostly free" rating.

Scandinavian countries have low corporate tax rates and transparent procedures to establish a business. Moreover, these countries have implemented numerous reforms over the past couple years. For instance, cutting income taxes has become one of Iceland's crowning economic achievements. Denmark has been ranked by the Economist Intelligence Unit (EIU) as having the best business environment thanks to, among other things, its flexible labor market.

Despite the good news about reform, other details remain grim. Sweden has extremely high taxes, which encourage workers to cut hours to avoid them. The Norwegian government continues to drag its feet on privatization, thus thwarting investment into the country. Additionally, the Scandinavian welfare state hinders productivity by enabling otherwise healthy workers to stay at home.

Johnny Munkhammar, director of the Swedish free-market institute, Timbro, wrote in *TCS Daily* in March that Sweden is like two different countries. One is a country that has pursued reform, the other a country that has held on to the "Social Model of a big state."

This could be said for all the countries of the region as they balance free-market reforms with generous welfare systems. For instance, every day about one-fifth of the workforce stays home in Sweden. These "potential" workers are receiving disability benefits or are on sick leave. "Almost everyone who requests sick leave is granted it," notes the OECD (Organization for Economic Cooperation and Development).

The Swedish government's aim is to help bridge the gap between sickness and work. But many take advantage of these benefits and use them as permanent income, as evidenced by the increase in disability and sick leave over the past decade. "The sickness rate of a Swede in his or her twenties, for example, is higher than the overall absence rate in all but four European coun-

Economic Performance in Scandinavia

Country	Population	GDP Growth	Unemployment
Denmark	5.4 million	2% (2004)	6.4% (2004)
Finland	5.2 million	1.8% (2005)	7.9% (2005)
Iceland	296,737	6.5% (2005)	2.1% (2005)
Norway	4.6 million	3% (2004)	4.5% (2004)
Sweden	9 million	3.6% (2004)	5.5% (2004)

Source: Deloitte Touche Tohmatsu Country Guides in cooperation with the Economist Intelligence Unit (www.deloittecountryguides.com/index.asp.)

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tries," the OECD said in a 2005 economic survey of Sweden.

Scandinavia also has generous paternity leave. In Iceland, fathers can take up to three months off while receiving 80 percent of their salary. Swedish couples are entitled to take up to 480 days (240 per person). The first 390 days pay 80 percent of parents' qualifying income, while the last 90 days pay a flat rate of 60 Swedish krona (about $8.40) per day. Not surprisingly, 95 percent of the high-rate benefit days are used.

"A total of 2.2 million people in Denmark received income-substitute benefits in 2003," according to the 2005 Danish Statistical Yearbook. The term "income-substitute benefits" includes sickness, unemployment, maternity, and social assistance. Many Scandinavians use these benefits as a means to earlier retirement.

In Finland "nearly 7 out of ten new retirees rely on some form of unemployment or disability payments," the OECD reported this year. On the other end of the age spectrum, generous benefits encourage the young to take their time with school, delaying entry into the workforce.

Whether they work or not, it's unlikely that Scandinavians will have to worry about having a roof over their heads. Several countries have housing programs. Almost 75 percent of the Finnish population, even high income earners, are eligible for government-subsidized housing, according to the OECD. Denmark manipulates the housing market through direct subsidies and price regulation. Sweden offers a housing allowance based on housing costs and the number of children in the household.

Paying for medical coverage isn't a concern either. Scandinavia's generous health-care system is well known, with the government continuing to pick up most of the tab. For instance, the EIU reports, the Norwegian system gives free treatment to all "with the exception of adult dental care and opticians." The government pays 84 percent of health-care costs.

Likewise, Iceland's central government covers about 85 percent of the costs, with patients contributing toward outpatient care and pharmaceuticals. Iceland has more doctors per 1,000 inhabitants than the United States and United Kingdom do. Finland has reduced health-care spending, paying about 76 percent of total costs in 2003. Finnish cuts have resulted in fewer hospital beds, falling from 11 for every 1,000 inhabitants in the 1990s to fewer than seven in 2004, according to the EIU.

Swedes Get Subsidized Health Care

Subsidized health care is available to all Swedish residents. Adults may be charged up to 900 krona (about $126), whereas children (anyone under 20) receive free care. Dental care, while subsidized from the national dental insurance, has been deregulated, allowing providers to set their own fees. Health care is largely a public-sector effort, with only 8 percent of physicians in private practice. Private insurers pay for less than 1 percent of health care.

Denmark's system gives coverage to everyone, although immigrants must wait six weeks for coverage to start. Health care is free, with the exception of "dental care and physiotherapy." Medication is subsidized. The majority of health-care costs, 86 percent, are covered by local municipalities, with the rest of the money coming from the central government (5 percent), private insurance (5 percent), and employers (4 percent), reports the EIU.

While free or heavily subsidized health care for all may sound ideal, the quality of the care is often far from it. The biggest problem may simply be access. Sweden has "a low proportion of general practitioners relative to specialists," notes the EIU. Swedes often have to wait a long time to be treated for nonthreatening conditions. A Swedish company, RelaxU, has turned this unfortunate reality into a profitable venture by working with Bangkok Phuket hospital to organize trips to Thailand for treatment. Leif Erre, RelaxU's head, states that in Sweden "the waiting period for an operation or treatment can be anywhere from two to eighty weeks." Such news isn't shocking when the Swedish government freely admits that "the health services in Sweden rest largely in the hands of local politicians in 21 geographical areas."

All is not well in Denmark either, as Danes have one of the lowest life expectancies in Western Europe. As costs have risen, standards have declined and waiting times have increased, according to the EIU. Danes have responded by taking greater interest in private insurance.

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The number of people holding private policies rose from 1.1 million in 1991 to 1.75 million in 2004.

Finland also has a low number of general practitioners, and until recently Finns had to wait a long time for care. The government introduced waiting-time targets in 2005, and things have improved, according to the OECD. Norway has also implemented reforms thereby improving service, reducing waiting times, and increasing levels of treatment. But costs have risen steeply due to the volume of services and increasing salaries, says the OECD. Oil revenues give little incentive to impose cost-cutting measures.

Paying the Piper

Scandinavians may seem to have it all, with generous paternity leave, sick leave, education benefits, and cheap health care, but it all comes at a price. Scandinavians pay for these benefits with high taxes. The governments make no effort to hide this, as evidenced by this paragraph from a Danish government tax guide for new citizens:

"The tax rate in Denmark is one of the highest in the world, as Denmark has a very large public sector. The public sector looks after many things that people in other countries often have to pay for themselves or that may not even be available to the public. Danish society is expensive to run and thus requires a lot of tax funds."

Danes are subject to numerous taxes, including state income taxes and municipal, county, and church taxes. Tax rates are progressive and reach 59 percent. Income taxes were cut in 2004, and a tax freeze was implemented in 2001. The Danish Ministry of Finance projects that the tax burden as a percentage of GDP will fall from 50.1 percent in 2005 to 47.5 by 2007.

Taxes stifle business. A high tax on new cars makes innovation in the auto sector impossible, according to Ford's managing director in Denmark, Kenneth Jorgensen. Taxes and duties account for around 50 percent of GDP. Currently, corporate taxes are levied at 28 percent.

Sweden's tax burden was 50.5 percent of GDP in 2004. The OECD notes that some Swedes avoid taxes by working fewer hours or "operating in the black economy."

Swedish taxes are so high that even the Swedish tax authority doesn't want to pay them. A May 19 article in *Forbes* magazine noted that the Swedish tax authority produced television commercials in Estonia to escape the high taxes in Sweden. These commercials, which encouraged Swedes to pay their taxes on time, would have cost "50 to 100 percent more to make in high-tax Sweden." Despite having high personal income taxes, Sweden has low corporate taxes with a flat 28 percent rate. The inheritance and gift tax was abolished in 2004.

"Finns face a high personal tax burden, particularly when taken together with municipal tax, church tax and social insurance contributions," reports Deloitte Touche. Finland's corporate tax rate was lowered in 2005 from 29 percent to 26 percent. Finland's VAT (value-added tax) rate for goods and services is 22 percent.

Like the Finns, Norwegians face a heavy tax burden, with progressive income tax rates up to 51.3 percent in 2005. The wealth tax will be halved this year and cut again in 2007; the goal is to eliminate it eventually. Corporate taxes are 26 percent, and the VAT rate is at 22 percent.

Iceland's low corporate and personal income taxes are an exception to the rule, and they will go even lower thanks to reforms that started in 2004 and that will continue through next year. The general rate for personal income tax will be lowered to 21.75 percent by 2007.

Reforms introduced in 2002 have lowered corporate taxes from 30 to 18 percent (26 percent for partnerships), *Indsigt* magazine reports. These taxes are lower than they were in the early '90s, when the rate was 50 percent. "The largest single source of Treasury revenue is the value-added tax, which is levied at 24.5 percent on most goods and services," the Central Bank of Iceland reported last year. The VAT has also been targeted for reform.

Corporate rates in these countries are considerably lower than income tax rates, indicating that Scandinavian governments recognize the necessity of low rates to attract new investment.

Open for Business

These countries have a solid base for investment through their protection of property rights and strong rule of law. Moreover, they offer an educated workforce, a range of natural resources, and little or no corruption. In addition to low corporate tax rates, the

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Scandinavians have made other notable changes to open the door to investment.

Privatization has come to these countries, thus increasing opportunities for investment, although some have been slower than others. The EIU notes that privatization has exposed "Denmark to increased competitive pressures" and has provided a "useful source of income for reducing public-sector debt."

According to the Invest in Iceland Agency, public ownership there is being "phased down by privatization and the main role of the public sector is in health, education and social welfare." Icelandic industrial policy has undergone changes over the past decade through implementation of "a more active competition policy replacing price supervision or even price controls that prevailed in many sectors," says the Ministry of Foreign Affairs.

Applications to establish a new business in Iceland are usually handled in one day. In business, time is money, thus Iceland's quick turnover results in lower overhead costs. Likewise, Denmark offers "quick, informal and cost-efficient establishment procedures," Invest in Denmark says. Denmark also offers an online registration system and boasts that a company can be incorporated "within a few hours."

Establishing a business in Sweden takes a little longer, about two to three weeks. Yet according to a report by the World Bank, it's worth the wait. A 2005 World Bank comparison of 145 countries found that Sweden is one of the world's top ten economies in "terms of ease of doing business."

Starting a business in Finland is easy. The Finnish government reports that 185 new foreign-owned companies opened their doors there last year. Finland's location aids its success in attracting new companies. "Finland is an attractive export base for the Baltic states and the regions of Russia bordering Finland," notes Deloitte Touche.

These countries also have a history of trade and are known for exports such as bacon, oil, autos, fish, timber, machinery, and cell phones. Their free-trade policies have contributed to their growth. According to the Heritage Foundation, Denmark, Finland, Norway and Sweden have a "low level of protectionism," while Iceland has a "moderate level."

Denmark, Finland, and Sweden are members of the European Union (EU). Iceland and Norway belong to the European Free Trade Association (EFTA) and to the European Economic Area (EEA). The EEA covers the 25 member states of the EU plus Iceland, Liechtenstein, and Norway.

Trade's contribution to these economies is significant. It accounted for 46 percent of Swedish GDP in 2003. The Swedish government credits surging exports as one of the main drivers in economic growth. Norway describes trade as part of the foundation to advance its economy.

Still Room for Improvement

These countries still have much room for improvement despite the strides that they have made toward liberalization. Scandinavian countries have a good deal to offer, yet their reluctance to radically reform the welfare system makes them their own worst enemy. According to Stephen Brugger, executive director at the American Chamber of Commerce in Denmark, it is impossible to maintain things the way they are while expecting different results:

> In other words you can't retain all of the safety mechanisms of the existing social welfare system and simultaneously grow a competitive, innovative and entrepreneurial economy. It is important that the government communicate to the population that we can't both renew ourselves and keep things the way they are, otherwise we will be outpaced by the countries surrounding us. It is necessary that we change some things fundamentally if we are to attract foreign investment.

A simple focus on productivity would do these countries a world of good. Excessive regulations cost productivity (and money) and thus will deter, not attract investment. As the U.S. Commercial Service acknowledges, Swedish "labor laws create an expensive market for low cost labor, making operations like franchising a challenge."

Attracting investment is one issue, while convincing Scandinavians to decline generous sick leave and go to work is another. Sweden's problem cannot be blamed on

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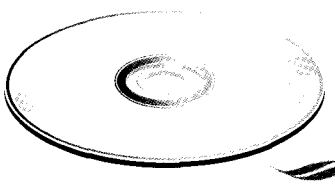
an uneducated workforce; on the contrary, it's the less skilled, for the most part, who are working while the educated stay home.

Sweden's official unemployment rate, 5.5 percent in April according to Statistics Sweden, should be viewed with skepticism. A recent study by the McKinsey Global Institute indicates that Sweden's real unemployment rate is around 15 percent. "McKinsey reached its conclusions by including those who want to work and those could do so, meaning people on government programmes as well as those on prolonged sick leave," according to the *Financial Times*.

These countries could learn a lot from Iceland. It has one of the highest labor-participation rates in the world, with older people staying in the workforce longer. Little Iceland has experienced larger growth and lower unemployment than the other countries. It seems that tax reform, privatization, and citizens who are willing to work befit growth.

Greater privatization opens the door to more investment. Although state ownership is declining in Norway, it still has a long way to go. The government owns some of the largest companies in Norway, such as Statoil, which is partially privatized, and Norsk Hydro. The government also owns other enterprises ranging from electric plants to banks. Norway's problems extend beyond its lack of privatization. Norwegian labor costs and taxes deter investment as well.

Scandinavia has taken notable steps toward liberalization and has benefited greatly from it. If history is any indication, greater liberalization will bring greater investment. This transformation depends in large part on political will. Various factors, including the competitive forces of globalization and the fiscal pressure of large aging populations, may convince their leaders that there's still work to be done.



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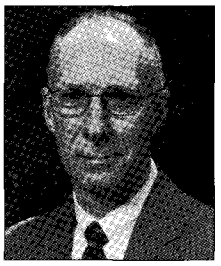
When the Government Took Over U.S. Investment



BY ROBERT HIGGS

In the oft-quoted final chapter of *The General Theory of Employment, Interest, and Money*, John Maynard Keynes concluded that if we are to avoid a chronic tendency toward economic depression, the state will have to undertake, among other things, "a somewhat comprehensive socialisation of investment . . . though this need not exclude all manner of compromises and of devices by which public authority will co-operate with private initiative."[1] Fortunately, in the long term this ill-founded policy proposal was not embraced outright in either the United Kingdom or the United States. For several years, however, during World War II, the U.S. government did carry out a "somewhat comprehensive socialisation of investment," whose effects most economists, then and afterward, have misunderstood.

In mid-1940, the U.S. government initiated a serious program to prepare for war. Between June 1940 and December 1941 about $36 billion was made available to the War Department alone—more than the Army and Navy combined had spent during World War I. As Secretary of War Henry L. Stimson remarked, however, "the pinch came in getting money turned into weapons." The United States possessed enormous potential to produce munitions, but early in 1940 its munitions industry was, in Donald Nelson's words, "only a token industry," and by comparison with the munitions industry of Japan or any of the great European powers, "a pigmy." To succeed, the rearmament program somehow had to "enable American industry to make the heavy capital commitments, plant expansion, and organizational changes essential to large-scale armament production."[2]

In 1940 and 1941 the government placed heavy reliance on measures to induce private enterprises to invest in war-related industrial capacity by granting tax concessions and by adopting new procurement rules—cost-plus contracts, advance payments, and other measures—to shift risks from the arms suppliers to the taxpayers.[3] Businessmen, however, were reluctant to invest heavily in the projects the war planners deemed most urgently needed, and ultimately, especially after the declaration of war in December 1941, the government resorted for the most part to directly financing the build-up of war-related capital; that is, it resorted to what had been called, during the war of 1914–18, "war socialism."

For net national investment considered in its entirety, the government completely displaced private investors during the war. According to National Income and Product Accounts data for the years 1942–45, *net* private investment was minus $6.2 billion, and *net* government investment was plus $99.4 billion.[4] Although economists have credited this government investment with various positive contributions to wartime and postwar economic growth, the bulk of it had little or no value beyond its immediate contribution to winning the war. Thus this episode dramatically exposes a fundamental, but false, assumption that underlies the official data on capital formation—namely, that *all* expenditures for durable producer goods or munitions form genuine capital.

Of the government's vast wartime expenditures for "capital formation," almost $14 billion went to build so-called command installations—bases, training facilities, ammunition depots, staging areas, induction centers, prisoner camps, and a great assortment of other strictly military facilities.[5] At least 90 percent of the government's *net* investment of $85 billion for durable military *equipment* in 1941–45 went to purchase items such as combat airplanes, tanks, warships, guns, ammunition, and other such purely military durable goods, which had little, if any, value in peacetime activities.

Of the amounts spent on manufacturing facilities,

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which accounted for approximately 90 percent of the government's wartime *industrial* investment of $17.2 billion (gross), the bulk flowed into a handful of industries: aircraft engines, explosives and shell-loading, shipbuilding and repair, ammunition, guns, machinery and electrical equipment, petroleum and coal products, combat and motorized vehicles, and machine tools.[6] As economist Glenn McLaughlin concluded in 1943, "In general, the proportion of public financing has been at a maximum for those industries whose expansions have been most disproportionate to probable postwar needs; . . . specialized war plants . . . possess questionable peacetime value; . . . [and] some of the special-purpose machinery will be worthless for peacetime operations."[7] Validating this assessment, a 1946 study by an analyst for the Board of Governors of the Federal Reserve System concluded, "Prevailing opinion seems to be that about two-thirds of the Government owned war plants will not be adaptable to postwar production."[8]

Postwar auctions of plants the government had built during the war confirmed these assessments. In general, the bidders offered no more than a small fraction of what the government had spent to construct the facilities. For example, the Maritime Commission, which had "decided to finance the emergency [ship]yards as if they were arsenals" because "it was believed that they would have little or no postwar value," discovered that, indeed, after the war, "shipyards were a drug on the market," and "only a few found purchasers willing to pay even 12 per cent of what the yards cost."[9] The Navy's enormous accumulation of new and expanded shipyards had similarly little value after 1945.[10] Likewise, the War Department's huge accumulation of aircraft-building plants represented a drastically excessive capacity for satisfying the anemic postwar demand for aircraft, and hence it had little value.[11]

Unsustainable Distortions

Besides producing unsustainable distortions in the sectoral and industrial composition of the capital stock, the government's investment program created distortions in its locational distribution that reflected, in part, wartime security concerns and, in part, adjustments to other forms of government-induced wartime distortions, for example, those in available energy supplies. McLaughlin remarked in 1943, "Many war plants throughout the country will be physically appropriate for the manufacture of civilian products but geographically inappropriate."[12]

In sum, most contemporaries greatly exaggerated the heroic achievements of the wartime socialization of investment, as have subsequent historians and economists. In large part, they simply failed to appreciate how much of the "capital" took strictly military forms. Even the industrial investments, however, proved largely ill-suited for making a valuable contribution to postwar civilian production: they were too concentrated in the wrong industries and in the wrong locations for postwar purposes. The wartime socialization of investment served a definite purpose in helping the U.S. military-industrial complex to triumph over the nation's enemies in World War II, but beyond that, its achievements had little, if anything, to recommend them.[13]

1. New York: Harcourt, Brace and World, 1936, p. 378.
2. Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* (London: Hutchinson and Co., 1947), p. 166 (Stimson quote); Donald M. Nelson, *Arsenal of Democracy: The Story of American War Production* (New York: Harcourt, Brace and Co., 1946), pp. 34–35 (Nelson quotes); Elberton R. Smith, *The Army and Economic Mobilization* (Washington, D.C.: U.S. Army, 1959), pp. 129 (Smith quote), 219.
3. For description and evaluation of these measures, see Robert Higgs, *Depression, War, and Cold War: Studies in Political Economy* (New York: Oxford University Press, 2006), pp. 37–56.
4. For data sources and calculations, see ibid., pp. 84–85.
5. Smith, pp. 444, 448.
6. Glenn E. McLaughlin, "Wartime Expansion in Industrial Capacities," *American Economic Review* 33; Supplement (March 1943), pp. 100–109.
7. Ibid., pp. 109, 114, 116.
8. Frederick C. Dirks, "Postwar Capital Formation and Its Financing in Manufacturing and Mining Industries," in *Private Capital Requirements* (Postwar Economic Studies No. 5) (Washington, D.C.: Board of Governors of the Federal Reserve System, 1946), p. 14.
9. Frederic C. Lane, *Ships for Victory: A History of Shipbuilding under the U.S. Maritime Commission in World War II* (Baltimore: Johns Hopkins Press, 1951), pp. 108–09, 117.
10. Ibid., p. 397.
11. Higgs, p. 91.
12. McLaughlin, p. 117.
13. For a detailed analysis, see Higgs, pp. 81–100.

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Government-Mandated Fuel-Efficiency Standards

BY MICHAEL HEBERLING

Government mistakes have long lives. In response to the energy crisis of the 1970s, Congress passed the Energy Policy and Conservation Act. This legislation had two major objectives: 1) Reduce our overall consumption of petroleum and 2) reduce our dependence on foreign oil (meaning OPEC). The means to accomplish this was CAFE, Corporate Average Fuel Economy. Under CAFE automobile manufacturers were required to produce cars that averaged 18 miles per gallon. For light trucks the standard was 15.8 MPG. There was some flexibility. Every car (or truck) did not have to meet the standard. However, the average of all models (small, medium, and large) had to meet or exceed the standard. Failure to do so would result in a fine of $55 per car for every MPG shortfall. CAFE initially took effect with the 1978 models. The standard was increased in 1985 to 27.5 MPG for cars and to 20.7 MPG for light trucks. The light-truck standard will increase to 22.2 MPG in 2007.

As happens so often, the results of the fuel-efficiency program were opposite of the stated objectives. By reducing the per-mile cost of driving, it became economical to drive more. Forget carpooling and public transportation. The significant savings in MPG (114 percent improvement for cars and 56 percent improvement for light trucks) were more than offset by an increase in the per capita miles driven (through more leisure driving and living farther away from the workplace). So instead of seeing a drop in oil consumption, there was *a significant increase*. In 1975 U.S. consumption of oil was 14.4 million barrels per day. Today, we consume 18.7 million barrels per day. Given this revelation, it should not come as a surprise that oil imports did not decrease as predicted but *increased*. In 1975, before CAFE, we imported 37 percent of our petroleum requirements. According to the government's *Monthly Energy Review* of July 2005, with CAFE we now import 64 percent. CAFE neither reduced America's use of foreign oil nor lowered our consumption of gasoline.

Even if the masses had done what the elite class wanted (that is, drive less), it is unlikely the results would have been much better. Conventional wisdom assumes that most of a barrel of petroleum becomes gasoline for automobiles. Actually, gasoline accounts for less than half (44 percent) of the petroleum end-products. Some of the other end-products include: petrochemicals (such as plastics), jet fuel, diesel fuel, kerosene, propane, and home heating oil.

When the CAFE standards took effect in 1978, the initial impact was benign. Because of the high gas prices, consumers already strongly preferred high-mileage cars. There was no need for a mandate because consumers and the auto industry were responding to market conditions. In 1981 prices peaked at an inflation-adjusted $3.07 a gallon. After that, real gas prices started to plummet. By 1986 they had fallen to the lowest levels in 30 years. As a result, American consumers were abandoning the small cars for their true love: Big Cars. Unfortunately, Phase II of CAFE was just kicking in. The federal government was now pulling the auto industry and the consumer in opposite directions. By law the auto industry would be punished if it provided products that the consumer wanted. The industry had no choice but to pursue the following suicidal strategy: Overcharge for the big cars consumers demanded in order to restrict

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sales, and give away the small cars that consumers didn't want in order to encourage sales.

Unfortunately, consumers responded to this shell game in a way that neither the government nor the auto industry wanted. They stopped buying cars. The large-car market has effectively been replaced by pickup trucks, SUVs, and minivans. The light-truck market, which is not subject to the same CAFE restrictions as cars, has gone from 28 percent of the market in 1987 to over 55 percent today. This consumer rebellion also resulted in the following CAFE irony: The fuel-economy average for all vehicles dropped from 26.2 MPG in 1987 to the 24.4 MPG today.

It would be hard to find a more anti-consumer, anti-business, anti-jobs, or anti-American piece of legislation. The CAFE laws forced the Big Three auto industry to unilaterally surrender its strong suit, the large-car market, and go head to head against the small-car strong suit of the Japanese manufacturers. This was no contest. In 2004 the top four selling cars were are all Japanese: Toyota Camry, Honda Accord, Toyota Corolla, and Honda Civic.

To make compliance even more difficult, each of the Big Three American automobile companies actually have to meet two sets of CAFE standards, one for domestically produced cars and one for foreign-made cars. In other words, the U.S. companies could not use their high-MPG foreign-produced cars to offset low-MPG domestic cars. Since the large cars were more likely to be produced in the United States, the domestic-fleet target of 27.5 MPG was all but unreachable. To avoid fines for producing cars that the consumer wanted, the auto industry had four options: 1) downsize the large cars, 2) stop production of large cars, 3) move large-car production overseas, or 4) make the domestic large cars "foreign" by outsourcing at least 25 percent of the parts. If all this seems insane, that's because it is.

Besides being ignorant of economics, our elite class does not know much about engineering. They assume that the auto manufacturers are deliberately hiding the technological silver bullet that will enable cars to get phenomenal gas mileage. While a few known engineering changes could make marginal improvements, the only proven way to make substantial gains in miles-per-gallon efficiency is to reduce the weight of cars. This is accomplished by both making the cars smaller and by replacing steel parts with plastic parts. The average weight of new cars has dropped by an average of 1,000 pounds since CAFE became law. While lighter cars get significantly better gas mileage than heavier cars do, this comes with a price. There is an unavoidable tradeoff between better mileage and safety. The following is not rocket science, just Physics 101: Lightweight cars are less able than heavyweight cars to absorb the impact associated with a crash. In the late '90s the Geo Metro was able to get 44 MPG. According to the EPA, this was one of the most fuel-efficient cars in America. The Geo Metro was also ranked by the Insurance Institute for Highway Safety as one of the most dangerous cars in America. It had a death rate double that of the overall car average.

Deadly Standards

As Robert Crandall of the Brookings Institution and John Graham of the Harvard School of Public Health wrote in the *Journal of Law and Economics* in 1989: "CAFE will be responsible for several thousand additional fatalities over the life of each model-year's cars. We conclude that the real social cost of government-mandated fuel economy is much greater than is commonly believed." They went on to state: "We estimate that these 1989 model year cars will be responsible for 2,200-3,900 additional fatalities over the next ten years because of CAFE." While Crandall and Graham looked only at the 1989 model cars, CAFE-induced fatalities apply to every model year car since 1978.

Echoing a similar conclusion, in 2002 the National Academy of Science estimated that CAFE was responsible for between 1,300 and 2,600 fatalities and 13,000 to 26,000 incapacitating injuries in 1993. Based on data from the National Highway Traffic Safety Administration and the Insurance Institute for Highway Safety (IIHS), *USA Today* reported on July 2, 1999 (based on data through 1998) that 46,000 people had died needlessly since the CAFE legislation became law. The article also stated: "Small cars comprise 18 percent of the vehicles on the road. . . . Yet they accounted for 37 percent of the vehicle deaths in 1997." Given that the congressionally mandated killing and maiming has been going on another seven years, it is probably time to revise the total carnage figure to around 60,000 fatalities.

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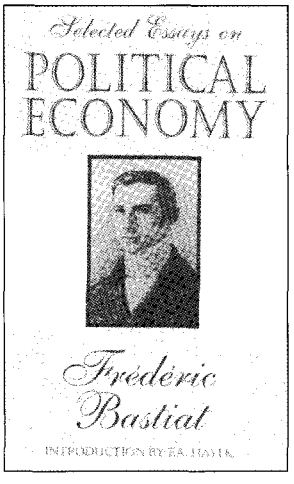
It has been 28 years since CAFE became law. A case could be made that this was (and continues to be) the worst piece of legislation ever passed by Congress. Contrary to grandiose predictions, it did not reduce oil consumption and it did not decrease our dependency on uncertain foreign sources of oil. It did, however, result in 60,000 deaths and hundreds of thousands of serious injuries. And it has all but destroyed America's Big Three auto companies. Given the damage done, CAFE should be scrapped. Any pending CAFE legislation should be permanently tabled as well.

Micromanaging the automobile industry through government centralized planning has been a colossal failure. It is time to let the marketplace create jobs, save lives, and efficiently allocate resources. The automakers should no longer be punished for producing products that consumers want. Consumers are fully capable of making rational decisions about cost, safety, fuel efficiency (hybrid and non-hybrid), comfort, appearance, and size without government mandates. They need no help from politicians, bureaucrats, consumer advocates, environmentalists, or media pundits. If a family wants to buy a safe vehicle big enough to transport grandma and all the kids, why is this controversial? It is time to restore freedom of choice in the automobile market.



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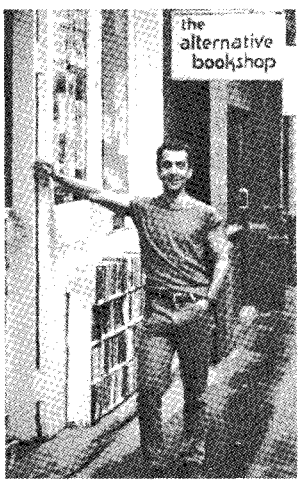
The Passing of a Libertarian Activist: Chris Tame (1949–2006)

BY NORMAN BARRY

It is with great sadness, indeed grief, that libertarians, classical liberals, and even thinking conservatives, learned of the death in March of Chris Tame, founder and president of the prolific Libertarian Alliance, after a painful struggle against cancer. It is an understatement to describe Chris as irrepressible, with a boundless energy and knowledge of the theory of liberty and the virtues of the free-market society. He had a fierce commitment to freedom in all its expressions that was shocking to some and yet immensely impressive to others. His career spanned the beginnings of the free-market and liberty movement in the 1970s, when most people his age and intelligence were socialists of some sort, through its high point in the glorious 1980s, when it had some support in the Tory party, to its nadir today when there is a lot of talk about liberty but few genuine defenders of its ideals. But Chris's commitment to freedom transcended party fortunes and class, religion, or race.



Chris Tame

He was born in Enfield and educated in conventional state schools. He went to Hull University to read for a degree in American Studies in 1969. After university it would have been easy for Chris to take a normal postgraduate course and get a job in those breeding grounds of Marxism and all forms of state parasitism, the polytechnics. Not for Chris—he was against the state and certainly wouldn't work for it. He worked for a number of freedom think tanks and affiliated organizations, including the Institute of Economic Affairs and FOREST (the Freedom Organisation for the Right to Enjoy and Smoke Tobacco), and he managed the free-market bookstore in Covent Garden, the Alternative Bookshop, from 1979 till 1985. Through difficult times he managed to keep up a publications record that would shame most conventional academics.

He was first introduced to free-market economics via the Austrian school, which is the only part of economic orthodoxy that has a firm commitment to capitalism. Chris soon became expert in the works of Menger, Mises, and Hayek, and the most sophisticated contemporary proponents of free-market economics, Murray Rothbard and Israel Kirzner.

Although Chris was well aware of, and could demonstrate with ease, the efficiency of property rights and free markets, this was not the sole reason for his enthusiasm for capitalism. The right to exchange simply flowed from the moral right to liberty, as did the right to property. These things were not merely necessary adjuncts to liberty but an expression of it, however rich they made us. In all of this Chris was directly influenced by the novelist and philosopher Ayn Rand and her Objectivism, whose moral antistatism he found so compelling. But unlike Rand, Chris's arguments for liberty were always graced with impish humor. Liberty was serious, but it could also be fun.

Although never part of the established academic community Chris was a prolific writer. He was a scholarly enquirer into the history of classical liberalism, writing on Adam Smith, the Scottish Enlightenment, and

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Austrian economics. He also delighted in rediscovering previously neglected figures in the history of the freedom movement; his most important work here was his resurrection of the "old" liberal J. M. Robertson. For his scholarly contributions to the field he was awarded a Ph.D. by Middlesex University. Working to the end, at his death he was engaged in his vast Bibliography of Freedom.

But we will remember Chris for his charismatic personality and relentless optimism. When he was manager of the Alternative Bookshop it became a meeting ground for libertarians who just wanted somebody to talk to. And that was normally Chris. Most of the customers seemed also to be authors; others had just come in to hear Chris's tapes of Elvis that brightened up the shop. He was a great fan of rock music and jazz.

We shall remember Chris as the leading figure in the halcyon days of the libertarian movement, the 1980s, when even conservatives were entertaining radical ideas about freedom and markets. He had little time for the current generation of Tories, who are more interested in office than ideas. As he would ruefully remark, they are not even good at that. He was diagnosed with a particularly aggressive form of bone cancer in July 2005, but he bore his affliction, and all its pains, with courage and humor. He was too ill to attend a ceremony in 2006 by the Centre for the New Europe at which he was granted the Adam Smith Lifetime Achievement award.

Libertarianism is rich enough to survive the death of Chris Tame—ideas do outlive people—but it will be a much poorer movement.

Bills of Rights do not actually maintain freedom. To put it crudely, if the civic order is dominated by liberal mores and ideas then a Bill of Rights isn't necessary. If it is not then a Bill of Rights won't help you. The Bill of Rights advocates basically suffer from a form of social reification. The Bill of Rights is simply a document, it has no reality except as a piece of paper outside of the ideas and behaviour of individuals. It was not the paper "checks and balances" of the American Constitution which maintained American freedom, it was the "invisible," but actually more real ones manifest in the ideas and actions of millions of Americans. The fact that people would rather go hungry than accept state welfare, that individuals simply would not put up with the sorts of interventionism now accepted as commonplace by contemporary Americans—this is the real power of ideas as social forces. It is the power of the social order, of civic society, not scraps of paper, that limited the American state. . . .

American political and constitutional history offers ample evidence for the case against a Bill of Rights. When liberal hegemony was lost in America (from the turn of the century) and the social mores and predominant ideas became more collectivist and statist, then the American Constitution and the Bill of Rights simply did *not* serve as a bulwark of freedom. . . .

It might be plausibly argued that the Constitution and the Bill of Rights slowed down the governmental manifestation of collectivism in America, but I doubt if it could be shown that this was of any great magnitude. Although it might also be argued that collectivism and statism had to adopt certain judicial disguises, to dress themselves in constitutional terms, this was no great problem for them. . . .

Liberalism and libertarianism need to look elsewhere for the means by which the aggressive use of force is minimised and individual rights respected. Those means, in my view, lie in the strengthening of what we might term "social power" and the whole moral and psychological structure of society, and by what Proudhon called "the dissolution of government in the economic organism."

—Chris Tame

"The Case Against a Bill of Rights," 1998

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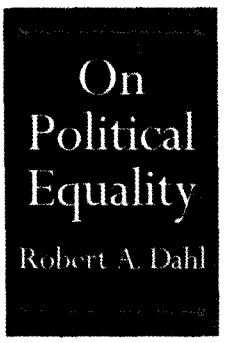
Book Reviews

On Political Equality

by Robert A. Dahl
Yale University Press • 2006 • 142 pages • $24.00

Reviewed by Richard M. Ebeling



In many of his writings during the first half of the twentieth century, the Italian classical-liberal historian Guglielmo Ferrero explained that the social crisis through which the Western world had been passing since the French Revolution was about the basis of political legitimacy.

For practically all of recorded history, the most commonly experienced political regime was hereditary monarchy. Its rationale was order, continuity, and stability. Everyone knew his place and duties in society, and each person was assured a status that provided a degree of security—or so the theory and justification went.

The monarch could claim to provide this because he was sovereign over all he ruled—not merely the land and the objects on it, but his subjects as well. While tradition and various political compromises placed certain restraints on what he could do and for what reason, everything over which he lorded was his property.

The French Revolution, Ferrero argued, ushered in the idea of a new sovereign: the people. But what exactly did this mean? In the American variation on this theme, the focus was generally on the sovereign individual. The individual is endowed with certain inalienable rights, and the political order is meant merely, though importantly, to secure the rights to life, liberty, and property from individual or organized aggression.

Starting in Europe, however, democracy soon became the political vehicle for the expression of the people's will. An individual's freedom was expressed through his participation in and the results following from the political process. At first the vote was limited, often to men who owned some defined amount of real property. The justification for that limitation was that such individuals had demonstrated the responsibility, forethought, and practical wisdom essential to making decisions affecting the institutions and laws of society. Furthermore, having established a degree of wealth, they might be more likely to be above the everyday temptations of material corruption.

But if the people are sovereign it seemed logically inconsistent to limit the "freedom" to vote to a minority of the citizenry. So by the early decades of the twentieth century, the logic of the democratic ideal led to the extension of the franchise to a growing number of citizens, until it has come to be generally accepted that every adult individual in society has a right to participate in the political decision-making process.

The crisis of legitimacy of which Ferrero spoke has largely been due to the ambiguity concerning the limits and content of the people's sovereignty. It also has been closely associated with the connection between political and social equality. This is the theme of Robert A. Dahl's recent book, *On Political Equality*. Dahl, the Sterling Professor Emeritus of Political Science at Yale University, clearly considers the essence of freedom to be participation in the political process. But if freedom is to be experienced equally by all in society, their political equality must be matched by a high degree of social equality.

At first he couches his argument in terms of what no citizen should be prevented from doing: no eligible citizen should be prevented from voting or have his vote omitted. Further, no citizen should be restricted from obtaining information with which to make an informed judgment and from freely participating in political debates and discussions if he so chooses.

It soon becomes clear that to Dahl this "negative" freedom from any obstruction to voting and participation is *necessary* for political equality, but it isn't *sufficient*. He proceeds to present an "ideal" state of political equality that requires an array of government-provided "positive" freedoms if his conception of a democratic utopia is ever to prevail.

In Dahl's ideal democratic world, each individual would be assured the financial means and the free time to become informed, knowledgeable, and able to participate in political discussions leading up to an election. He bemoans the fact that territorial size and population

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density preclude the practice of the stylized "town meeting" where all a community's citizenry come together, have their say, and then reach their collective decisions about all the affairs of society.

I referred to all the affairs of society because while Dahl admits that socialism has failed as a political and economic system, he only reluctantly accepts that there is no viable substitute for a market economy. (In a footnote he seems sorry that the case for "market socialism" never was given the hearing he thinks it deserved.) Yes, capitalism "delivers the goods," but it "causes" unemployment, poverty, business cycles, monopolies, as well as not enough housing, medical care, and retirement funding, along with too much greed and selfishness. In Dahl's world the role of government is to regulate, control, and restrict the actions of businessmen so the market will bring forth its horn of plenty without generating any of those bad side-effects.

Worst of all, capitalism creates an unequal distribution of wealth, which means in his eyes that some have more power and influence over the government than others because they have more time and money to participate in politics. But since for Dahl the only real and important freedom is political participation, he never considers that the answer to the problem of political abuse, corruption, and plunder is to reduce the involvement of government in human affairs. In his eyes that would be placing all the important issues of society in the "unfree" world of social and market relationships.

Indeed, while he admits that many people actively and even enthusiastically support and participate in various social and community endeavors, what they lack is a spirit of *political community*. In Dahl's view only in the political arena can we all really be equal and part of the human experience of shared life and purpose.

It comes as no surprise, therefore, that when Dahl tells us toward the end of the book what he thinks would make for a more democratic society, he proposes: (a) raising the minimum wage; (b) more subsidies to "the poor" and for child care; (c) universal health care, through more government involvement; (d) government-subsidized and -manipulated retirement plans; and (e) various political reforms to give "people" rather than "powerful interests" a controlling say over the political destiny of the country.

For Dahl, these are both means and ends. They are ways of making people more politically equal, and they represent the unspoken ideal of general egalitarianism that underlies his conception of the truly democratic and therefore "free" society.

This means that the crisis of political legitimacy, about which Ferrero wrote, is still unresolved. Is the role of the state to secure the liberty of individuals to be sovereign over their own lives, or is the state to serve as the coercive means for floating majorities to rule as the sovereign over the lives of all? If Robert Dahl were to have his way, the individual would be reduced to just a vote in the democratic collective mass.

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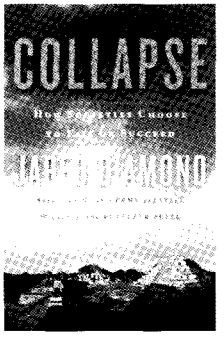
Collapse: How Societies Choose to Fail or Succeed

by Jared Diamond
Viking/Penguin • 2005 • 575 pages • $29.95 hardcover; $17.00 paperback

Reviewed by Gene Callahan



Jared Diamond's book *Collapse* is essentially the second volume of the work begun by his prize-winning *Guns, Germs, and Steel* (1998). While the earlier book attempted to isolate why certain societies have succeeded, the later one focuses on why others have failed. *Collapse* examines a few paradigmatic cases of societies disappearing, including the ancient Mayans, the Easter Islanders (of giant-stone-head fame), the Greenland Norse, and the Anasazi of New Mexico. Diamond then discusses a few case studies of modern environmental problems and responses, in Haiti, Rwanda, Montana, New Guinea, and elsewhere. His primary thesis is that environmental degradation is the chief cause of society-wide failure.

Diamond is an engaging writer, and his books are always filled with fascinating stories. But he is not a historian (he was trained as a physiologist and is now a professor of geography), and it shows in the way he cherry-picks through secondary sources to find those that support his preconceptions. For example, in one of

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the primary historical episodes he narrates, Diamond contends that the Norse settlements in Greenland expired primarily because those Scandinavian colonists did not adapt sufficiently to their new environment due to their rigid cultural ties. One purported piece of evidence for that claim is that, despite the wealth of fish available at their doorstep, the Norse settlers did not eat them. Their foolish abstention is demonstrated, according to Diamond, by archeologists' failure to find fish bones in Norse "middens" (piles of rubbish).

But J. J. Arneborg and other Danish and Icelandic researchers have used chemical analysis of Norse remains to refute Diamond. They have shown that the diet of those Greenlanders shifted dramatically toward marine foods over several centuries, and that there is no reason to expect to find fish bones in their middens: The bones decay rapidly and are also eaten by birds, dogs, and pigs.

In discussing the Norse, Diamond's desire to make a point sometimes so consumes him that he cannot even maintain his train of thought for an entire sentence. He declares, "In trying to carry on as Christian farmers, the Norse were prepared to die as Christian farmers, rather than live as Inuit; they lost that gamble." But the Norse decided they would prefer to die as Christian farmers than live as Inuit, and they did so: How is that "losing a gamble"?

Another instance of Diamond's prejudicial choice of evidence, this time related to the collapse of the Easter Island civilization, is detailed by Benny Peiser of Liverpool University, who writes:

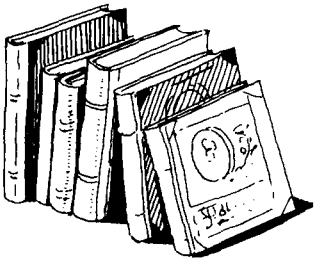
> It is generally agreed that Rapa Nui's oral traditions are untrustworthy and of relatively late origin; they are extremely contradictory and historically unreliable. . . . In spite of this . . . Diamond insists that these highly questionable records are reliable. . . . Without his confidence in the reliance on mythology and concocted folklore, Diamond would lack any evidence for pre-European civil wars, cannibalism and societal collapse. . . . In many ways, Diamond's methodological approach suffers from a manifest lack of scientific scrutiny. . . . [H]e consistently selects only the data and interpretations that seem to confirm his conviction that Easter Island self-destructed.

Furthermore, Diamond appears to draw the same sort of conclusions from any evidence whatsoever. For example, he says, "Montanans' pioneer commitment to individual freedom and self-sufficiency has . . . made them reluctant to accept their new need for government planning and for curbing individual rights." He doesn't consider that many of the Montanans' problems stem from government interventions, nor how poorly "government planning and . . . curbing individual rights" worked as an environmental policy in the Soviet Union, Communist Eastern Europe, or Red China.

In pondering why "environmental rationality," as he sees it, does not always triumph, Diamond explains that "economists . . . attempt to justify [the irrational focus] on short-term profits by 'discounting' future profits," as though such discounting were just an accounting sleight of hand developed to rape Mother Nature, rather than a fundamental principle of all finance. He proceeds to contradict his call for suppressing individual rights by noting that people generally behave more rationally as individuals than as part of a crowd! And he further undermines his own thesis by describing how it was strong property rights, and not government regulations, that ensured the environmental care with which Chevron recently developed an oil field in Papua New Guinea.

The frequency of these oversights raises the question of whether Diamond's real interest is in safeguarding the environment or in increasing the amount of governmental control of society. That is the most fundamental, if far from the only, problem in his work. *Collapse* is worth reading, but it is a deeply flawed book that fails to achieve its grand ambition of transforming the way history is done.

Gene Callahan (MengerMisesHayek@aol.com) is the author of Economics for Real People.



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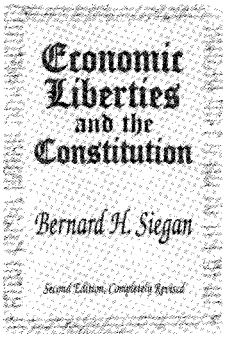
Economic Liberties and the Constitution

by Bernard H. Siegan
Transaction Publishers • 2005 • 419 pages • $49.95 hardcover; $29.95 paperback

Reviewed by George C. Leef



One of the books I most often refer to is the original edition of *Economic Liberties and the Constitution*, published in 1980. When I bought it I was just a few years out of law school, and I remember thinking, "I wish I had been able to take some courses from Professor Siegan." What he had written was a ringing defense of the proposition that economic liberties—property rights, freedom of contract, and the right to engage freely in peaceful occupations and commerce—are every bit as important under the Constitution as are "civil" liberties. As a student I had learned about the Supreme Court's demolition of constitutional protections for economic liberties and read some sharp criticism of the decisions in which the Court had determined that economic liberties weren't important enough to shelter from meddlesome legislatures. What Siegan's book did was to put the entire controversy into clear legal and historical perspective.

Last year Professor Siegan, who taught at the University of San Diego School of Law until his death this past March, undertook a revision and expansion of the book. He added several chapters dealing with changes since 1980; there have been many important court decisions since then. Some decisions are good, and some are quite bad, such as *Kelo v. New London*. Siegan also added commentary on changes in the world since the first edition was published, particularly the collapse of communism. The new edition thus gives the reader a more comprehensive view of the importance of economic liberties to progress and prosperity.

The core of both editions is Siegan's excellent analysis of the Constitution's intended protection for private property, freedom of contract, the right to enter into a trade or business, and other aspects of economic freedom. He demonstrates that our common-law heritage kept the state from interfering in those areas of life and that the Constitution was written with a view toward shielding them from the anticipated attacks by interest groups through legislation. If you have ever wondered how we got from the almost unbounded economic liberty of the early United States to the highly regulated conditions we have today, this book explains the transformation.

Madison was right that the evils of faction would lead to the erosion of liberty if it were allowed to go unchecked. In the nineteenth century, judges often blocked legislation (mostly at the state level) that deprived owners of their common-law rights, although there were some notable breaks in the dike. It was in the twentieth century that "progressive" judges decided that Congress and state legislatures should be given a free hand to deal with the socioeconomic problems of the time. Siegan recounts the key cases of the "substantive due process" approach that the Court employed to invalidate many legislated attacks on economic liberties until the mid-1930s. He also recounts the disastrous shift to a constitutional jurisprudence favorable to statism that occurred during the New Deal.

Of course, the Constitution hadn't changed. It was just that during the desperate economic troubles of the Depression, judges more and more succumbed to the notion that government must be allowed to "experiment" with policies supposedly designed to improve the economy. The experiments they approved entailed the curtailment of contractual freedom and property rights, especially for people in business.

In his chapter "Destroying the Original Constitution," Siegan spars with contemporary defenders of the New Deal Court's decision that it should give legislatures "deference" in economic matters because of their supposed expertise. Justice Stephen Breyer and Harvard law professor Lawrence Tribe, two advocates of that dubious theory, come in for strong criticism. Both favor giving Congress and state legislatures wide latitude in economic regulation, contending that as long as there is some "rational basis" for a statute or regulation, courts should not interfere. Writing about Justice Breyer, Siegan says, "[O]ne must conclude that the justice's views on legislative powers are unique to him rather than a principled interpretation of legislative power under the Constitution."

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The idea that the Founders would have approved of the current regime of mandates and prohibitions on people who wish to exercise their economic liberties has always been absurd. Reading Siegan's book makes the point all the more clear.

Siegan's new material takes the book somewhat away from the original edition's focus on the demolition of economic liberty in the United States (it unfortunately leaves out some important cases, such as *The Slaughterhouse Cases* and *Munn v. Illinois*, both of which were key late-nineteenth-century victories for the enemies of economic liberty) and turns the book into more of an argument for economic liberty worldwide. His new ninth and tenth chapters explain why statism has been a failure everywhere and show that the freest nations economically are where the greatest progress and prosperity are found.

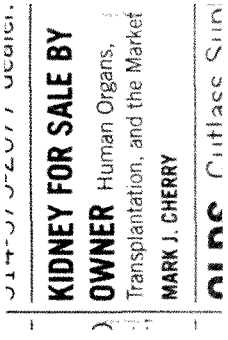
Bernard Siegan was an excellent scholar and consistent defender of freedom. His passing is to be lamented.

George Leef (georgeleef@aol.com) is the book review editor of The Freeman.

Kidney for Sale by Owner: Human Organs, Transplantation, and the Market

by Mark J. Cherry
Georgetown University Press • 2005 • 258 pages • $26.95

Reviewed by William L. Anderson



When I was a graduate student I had a professor who had been through a kidney transplant. Being both an economist and someone badly in need of a new kidney had led him to examine the dynamics of organ transplantation and, more specifically, why it was that people often had to wait years before a human organ was available. He came to the conclusion that the current government-run system leads to needless deaths and that a market system in organs would be economically and morally appropriate.

My professor is in a distinct minority. The law prohibits individuals from selling organs, and anyone who disobeys can find himself in federal court facing serious prison time. The sale of organs is illegal because most people in power regard organ sales as immoral—or at least that's the reason they give for the current policy.

Yet, as Mark Cherry demonstrates, the current government-run system has an enormous cost. From 1992 to 2001, he notes, "more than 44,308 patients died while waiting for organ transplants. . . . An additional 6,385 people died in 2002, and 6,509 in 2003." In the face of these staggering numbers, Cherry writes:

> Despite the significant potential of commercialization to increase the efficiency and effectiveness of organ procurement and distribution, to shorten waiting time, and thereby to reduce human suffering—while expanding the number of available organs—the possibility of creating a market in human organs for transplantation provokes in many feelings of deep moral repugnance, conjuring up nightmarish images of spare parts medicine.

Cherry, who teaches philosophy at St. Edward's University in Austin, Texas, believes otherwise, and examines the various arguments against organ sales. While he deals with the economic issues, his attack on the current regime of prohibition originates from a moral and philosophical point of view. In other words, he looks at the situation through the lens of a philosopher, not an economist. His conclusions, however, square somewhat (he wants a "regulated" market) with what we might hear from an economist trained in the Austrian tradition.

If the current regime is to be overturned, it will take more than the utilitarian arguments that most economists (though not necessarily Austrian) are likely to give. Cherry provides a strong philosophical justification for change.

It isn't entirely correct to say that organs can't be bought and sold. The buying and selling prohibition applies to individuals (dead or alive) from whom viable organs are "harvested." For example, if I were to perish in a manner in which some of my vital organs could be given to someone else, my family would have to agree to *give* those organs to a procurement agency, and not receive a penny in recompense.

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However, the procurement agency may then *sell* them to the hospital where the transplant takes place (at a profitable price, not surprisingly). Of course, doctors in this system benefit handsomely as well, since the relatively few transplants that can take place (due to the organ shortage) also means that the supply of qualified doctors will be less than what it would be otherwise.

No one either in a position of lawmaking authority or employed within the donor system will say that the laws exist to protect the incomes of those who procure organs and perform transplants, but there is no doubt that the current order does just that. Paying individuals for human organs may be "morally repugnant," but there are those who profit well from this forced altruism.

Cherry challenges the conventional wisdom on organ sales by beginning with the libertarian axiom of self-ownership. Here's how he lays out his argument: individuals own their bodies, and the state has no moral authority to employ nebulous "social justice" arguments to circumvent that fact. He writes:

> The significance of persons, especially regarding individual authority over one's body and one's bodily integrity, has become central to moral and legal reflections on the practice of medicine. Common law understood interest in the integrity of the person to include interest in his body and all the things that are in contact or connected with it. Property expresses the rights of *persons* in and over *things*. . . . A person's authority over himself, to freedom of choice regarding the use of his body, is central to understanding personal integrity. [Author's emphasis.]

One can almost hear Murray Rothbard saying that. It is good to read these words from someone who teaches in a humanities discipline, given that the liberal-arts side of the university has become a haven for the worst kinds of statism. In fact, throughout the book, Cherry expertly attacks the notion that the state should be the moral arbiter over consensual decisions made by individuals.

Kidney for Sale isn't an easy read, but it provides vital intellectual ammunition for those who believe that the current regime must be changed.

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In brief

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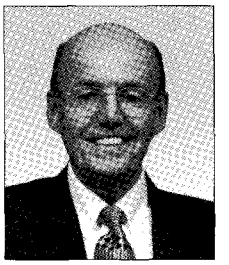
Freedom for Workers



BY CHARLES W. BAIRD

In my January/February column this year I explained why I believe that, given the existence of the National Labor Relations Act (NLRA), which regulates American labor-management relations, a classical liberal should support a national right-to-work-act. Last year *Freeman* book review editor George Leef published *Free Choice for Workers: A History of the Right to Work Movement* (Jameson Books). This is a superb account of a key part of the continuing struggle to defend the unalienable right of all workers to decide individually whether to be represented by, and to support, any third party in bargaining with their employers over wages, salaries, and other terms of employment.

The three most egregious impositions of the NLRA are exclusive representation, union security, and mandatory good-faith bargaining. Leef has little to say about the first and the last, although he defeats the case for the latter with a clever analogy to bargaining in the housing market. Union security has always been the primary concern of the National Right to Work Committee and its sister organization, the National Right to Work Legal Defense Foundation. Union security is the means by which the NLRA empowers unions to force workers who have already been forced to accept unwanted union representation to pay for that representation or be fired from their jobs. Leef begins by destroying all the hoary arguments by which unionists try to justify this legalized extortion and brilliantly deploys all the counterarguments. He then tells the right-to-work (RTW) story in crisp, entertaining, and informative prose.

The RTW movement was begun by railway workers who resented attempts by some railway unions to monopolize labor representation in that industry after the passage of the Railway Labor Act in 1926. With the onset of the Great Depression, Herbert Hoover placed the independence of individual workers in even greater jeopardy when he signed the Norris-LaGuardia Act (1932). The hegemony of unions over individual workers was completed by enactment of the NLRA (1935). The 1947 Taft-Hartley amendments to the NLRA did almost nothing to defend all workers' right to make choices for themselves. The infamous "except" clause that was added to Section 7 of the NLRA gave forced-dues extortion more apparent legitimacy than it ever had. Under Section 7 workers may refrain from union activities except when unions can prevent them from doing so by union-security agreements with employers. Apparently to make up for that bit of duplicity, a majority of the 1947 Congress added Section 14(b), which stipulates that individual states have the power to proscribe union-security arrangements within their respective jurisdictions.

One of Leef's most dramatic stories is his account of the 1965 attempt by President Lyndon Johnson and the Democrat-controlled Congress, at the behest of the AFL-CIO, to repeal Section 14(b). He likens it to World War II's Battle of Midway, with the union behemoth as the Japanese navy and the National Right to Work Committee and its indefatigable president, Reed Larson, along with Senator Everett Dirksen of Illinois, as the vastly outnumbered American fleet headed by Admiral Spruance. The unions and their political sycophants thought they had won the battle before it began. They completely discounted the ability of the Committee to arouse public opinion and grassroots activism against repeal. Nor did they worry about the minority of politicians (of both parties) who opposed repeal. With public-opinion polls it had commissioned, the Committee was able to convince a reluctant Senator Dirksen to lead a successful filibuster against the repeal. Leef's telling is filled with nail-biting suspense and high drama. Dirksen and the Committee defeated repeal in 1965 and again in 1966.

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In numerous other legislative battles, both in Congress and state legislatures, Leef exposes what can only be called hypocrisy. Most Democrats openly opposed RTW and still do. In contrast, many Republicans—in Congress and the White House (especially Presidents Nixon, Ford, and both Bushes)—claimed to support worker freedom of choice; but when it was time actually to vote or to take some executive action they cowered before the AFL-CIO. This, too, continues to be the case.

Two attempts at labor law "reform"—that is, making it easier for unions to capture forced dues-payers—during the Carter and Clinton years are especially interesting. The filibuster to stop "reform" in 1978 survived six cloture votes before the union-owned politicians were forced to concede defeat.

The National Right to Work Legal Defense Foundation, which Leef tells us was patterned after the NAACP Legal Defense Foundation, was created in 1968 to carry the battle against worker coercion into the courts. The Foundation has been astonishingly successful at the Supreme Court—for example, in those cases in which the Court ruled that unions may not collect money from unwilling workers for their political and ideological spending. This effort began with railway- and airline-industry cases, continued with government-sector cases, and culminated for most private-sector workers with the famous *Beck* case in 1988.

Alas, victory in the Court does not automatically translate into victory in practice. Even some in the Reagan administration were reluctant to enforce the *Beck* decision. The first President Bush refused to do anything to enforce *Beck*, except at the last minute before the 1992 election when he was trailing Clinton in the polls. All he could summon the courage to do then was to require federal contractors to post *Beck* rights in the workplace. President Clinton rescinded that order as soon as he took office. The National Labor Relations Board, whose continued existence depends on coercive unionism, still resists enforcing *Beck*.

Leef tells many other stories. Among them, the attempts by unions to harass the Committee with the help of the IRS and the Federal Election Commission are especially maddening. I will close with a story Leef doesn't tell.

FDR Infuriates the Unions

Section 7(a) of the 1933 National Industrial Recovery Act (NIRA) permitted individual workers to decide for themselves whether to have any union represent them. The unions fought hard to take this right away. On March 1, 1934, Senator Robert Wagner introduced a bill that would have done so. On March 25 President Roosevelt approvingly announced the settlement of a nationwide labor dispute in the auto industry that endorsed free choice for workers. The union establishment was furious, but without Roosevelt's support Wagner's 1934 bill died. In 1935 Wagner came back with a new bill which, among other things, stipulated that union representation must be decided by majority vote among workers in their respective workplaces. The winning union would become the exclusive bargaining agent for all workers who were eligible to vote. This bill became the NLRA on July 5, 1935, with Roosevelt's signature.

What accounts for Roosevelt's change of heart between March 25, 1934, and July 5, 1935? I think it was spite. On May 27, 1935, the U.S. Supreme Court ruled that NIRA was unconstitutional. This was the cornerstone of Roosevelt's feckless attempts to do something about the Great Depression. He was furious with the "nine old men" on the Court who opposed his corporatist ideas about how an economy should be run. The Wagner bill was consistent with those ideas, and many of those who opposed the Wagner bill were openly jubilant over the Court's NIRA decision. Roosevelt could have seen support of Wagner's bill as a way to get back at his political enemies.

George Leef and I agree that by any reasonable reading of the Constitution the NLRA is unconstitutional. It should be repealed. In the meantime all who subscribe to the freedom philosophy owe Reed Larson, the Committee, and the Foundation a great debt of gratitude for their persistent defense of worker freedom. A national right-to-work act would be a fitting tribute.

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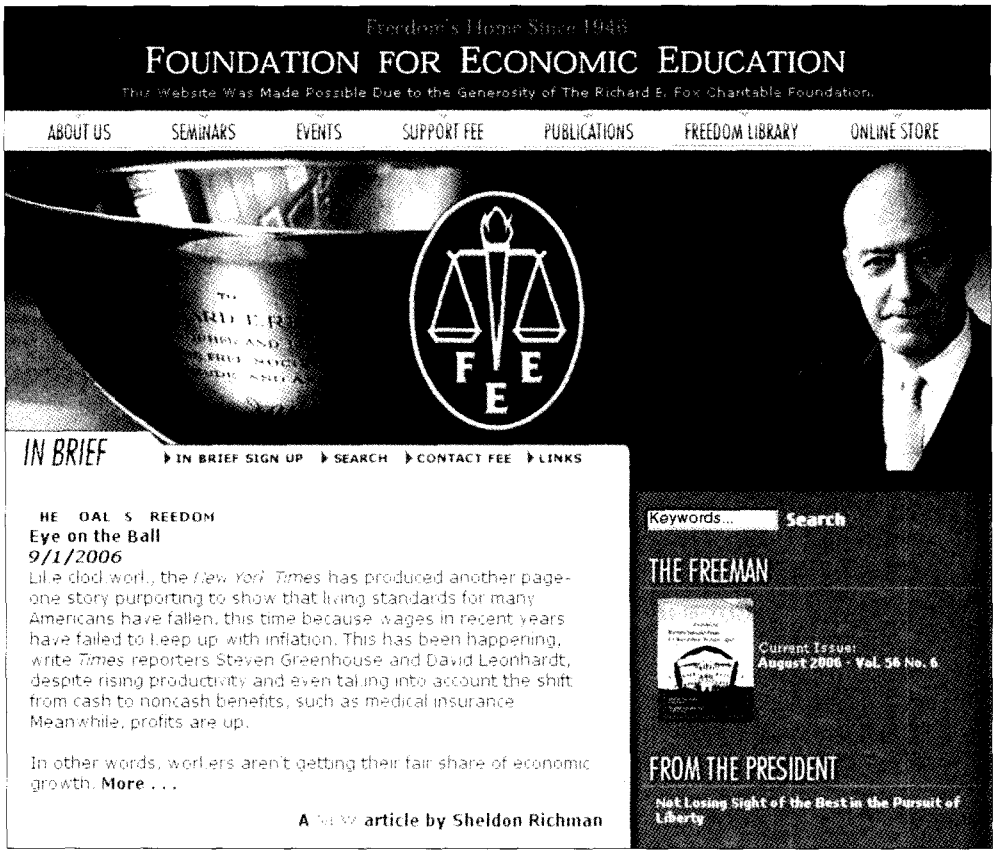

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— Gottfried Dietze (1922–2006), *In Defense of Property*

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